

9-1-1984

# Los Angeles County Transportation Commission v. Richmond: Taking the Initiative

Katherine Helen Bower

---

## Recommended Citation

Katherine H. Bower, *Los Angeles County Transportation Commission v. Richmond: Taking the Initiative*, 17 Loy. L.A. L. Rev. 937 (1984).  
Available at: <https://digitalcommons.lmu.edu/llr/vol17/iss4/4>

This Notes and Comments is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact [digitalcommons@lmu.edu](mailto:digitalcommons@lmu.edu).

# **LOS ANGELES COUNTY TRANSPORTATION COMMISSION v. RICHMOND: TAKING THE INITIATIVE**

## **I. INTRODUCTION**

In what has been called the "Great Property Tax Revolt,"<sup>1</sup> "The Great California Tax Revolt,"<sup>2</sup> and "The Great California Taxquake,"<sup>3</sup> Proposition 13, entitled "A Tax Reform Measure" on the ballot, passed with 64.8% voter approval on June 6, 1978<sup>4</sup> to become Article XIII A of the California Constitution. Prior to the passage of Proposition 13, California property tax had been levied on an ad valorem basis.<sup>5</sup> Under this system, the state legislature established the maximum tax rate<sup>6</sup> and the county assessors determined the value of the property.<sup>7</sup> Proposition 13 radically altered this method of taxation, substituting an "acquisition value system"<sup>8</sup> for the ad valorem system, as well as limiting the tax rate which could be applied to real property.

Proposition 13 contains four substantive sections.<sup>9</sup> Sections 1 and 2 taken together impose limitations on property taxes by decreasing both the tax rate and the assessment base to which it is applied. Section 1, while maintaining an ad valorem tax, requires that the tax rate be a maximum of 1% of the full cash value of the property.<sup>10</sup> Previ-

---

1. Keppel, *Property Taxes and the Revolt*, L.A. Times, May 9, 1978, § II, at 1, col. 2.

2. *A Brewing Tax Revolt*, NEWSWEEK, June 5, 1978, at 24.

3. Quirt, *Aftershocks from the Great California Taxquake*, FORTUNE, Sept. 25, 1978, at 74-75.

4. CAL. SECRETARY OF STATE, STATEMENT OF VOTE 39 (June 1978).

5. Ad valorem taxes are taxes which are levied in proportion to the value of the taxable item.

6. See generally K. EHRMAN & S. FLAVIN, *TAXING CALIFORNIA PROPERTY* 3-25 (2d ed. 1979 & Supp. 1980) [hereinafter cited as EHRMAN & FLAVIN] (discussion of California property taxation 1849 to present).

7. The amount of the property tax bill was derived by multiplying the assessed valuation of the property by the tax rate.

8. *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 235, 583 P.2d 1281, 1293, 149 Cal. Rptr. 239, 251 (1978). The "acquisition value system" sets as the tax base of the property the value of the property when it was acquired. EHRMAN & FLAVIN, *supra* note 6, at 41.

9. CAL. CONST. art. XIII A has six sections. Sections 1 through 4, the substantive sections, are discussed in the text; section 5 sets forth the effective date of Proposition 13 and section 6 is a severability clause.

10. Article XIII A states in part:

Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one

ously, the average property tax rate had been 2.5%.<sup>11</sup> Section 2 provides that the base to which the tax rate shall be applied is the assessed valuation shown on the 1975-76 tax bill or, in the case of a subsequent transfer, the market value at the time of the transfer, with a 2% increase in value allowed each year for inflation.<sup>12</sup> Prior to the passage of Proposition 13, property had been reassessed periodically to reflect current market values.<sup>13</sup> Section 2 ended this practice. The immediate effect of sections 1 and 2 was to slash approximately \$7 billion from California property tax revenues, a 57% reduction.<sup>14</sup>

Proposition 13, however, was not limited to property tax reduction. Sections 3 and 4 complement the first two sections by curtailing the taxing powers of the state legislature and local entities, as well as prohibiting the levy of additional ad valorem taxes or sales taxes on real property. Section 3 requires a two-thirds vote approval in the leg-

---

percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective.

CAL. CONST. art. XIII A, § 1.

11. Oakland, *Proposition 13: Genesis and Consequences*, in *THE PROPERTY TAX REVOLT* 31 (G. Kaufman & K. Rosen eds. 1981) [hereinafter cited as Oakland].

12. Article XIII A states in part:

Section 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction.

CAL. CONST. art. XIII A, § 2.

13. The practice of reassessing property to maintain the 25% assessed valuation ratio as market values rose was mandated by the Assessment Reform Act, CAL. A.B. 80, 1st Extra. Sess., § 34 (1966), 1966 Cal. Stat. 648, 658 (codified as amended at CAL. REV. & TAX. CODE § 401 (West 1970)).

14. Oakland, *supra* note 11, at 32. This reduction resulted in a \$3.6 billion benefit to owners of business property and a \$2 billion benefit to homeowners (Kuttner & Kelston, *The Shifting Property Tax Burden*, 2 PUBLIC POLICY REPORT 13 (Conference on Alternative State and Local Policies 1979)) as local governments—cities, counties and districts—lost 37% of their total incomes. Oakland, *supra* note 11, at 32. Before the effective date of Proposition 13, property tax revenues had represented approximately 21.8% of cities' total revenue and 34.6% of counties' total revenue. See CAL. LEGISLATIVE ANALYST, ANALYSIS OF THE EFFECT OF PROPOSITION 13 ON LOCAL GOVERNMENTS 7 (1979). It is interesting to note that some cities did not levy any property tax while some special districts relied entirely on the property tax. See CAL. ASSEMBLY REV. & TAX. COMM., NO-PROPERTY-TAX CITIES AFTER PROPOSITION 13 4-6 (1980).

islature for any increase in state taxes.<sup>15</sup> Section 4 requires that cities, counties, and special districts obtain two-thirds voter approval within the locality before imposing special taxes.<sup>16</sup>

The nature of the relationship of sections 3 and 4 to the entire amendment, however, is unclear. Sections 3 and 4 may constitute a mechanism to prevent property tax savings gained under sections 1 and 2 from being lost to increases in other taxes imposed by local governments in an effort to replace revenues lost because of Proposition 13.<sup>17</sup> Alternatively, sections 3 and 4 may represent tax limitations upon all non-property taxes, designed to work in conjunction with the 1% limitation on property taxes, to achieve broad, overall tax relief.<sup>18</sup> The latter view does not contemplate any direct relationship between lost property tax revenues and the proposed new taxes. This distinction, which is critical to an interpretation of section 4, will be discussed in greater depth subsequently.<sup>19</sup>

Legal challenges to the initiative followed immediately upon its passage. The first of these to be judicially resolved resulted in the California Supreme Court's initial pronouncement on the constitutionality of the new amendment. In *Amador Valley Joint Union High School District v. State Board of Equalization*,<sup>20</sup> Proposition 13 withstood attacks on its validity as a whole.<sup>21</sup> The court, however, specifically re-

---

15. Article XIII A provides in part:

Section 3. From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sale of real property may be imposed.

CAL. CONST. art. XIII A, § 3.

16. Article XIII A provides in part:

Section 4. Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

CAL. CONST. art. XIII A, § 4.

17. See, e.g., *California: Taxpayers' Revolt*, NEWSWEEK, Mar. 6, 1978, at 30 ("[Proposition 13 would make] it more difficult to impose other state or local taxes to replace the lost revenues."); L.A. Times, Apr. 23, 1978, § II, at 1, col. 2 ("Part 2 of their control is supposed to assure that government cannot easily replace the lost property tax revenue by raising taxes everywhere else.").

18. See, e.g., Quirt, *supra* note 3, at 75 ("John J. Klee, Jr., an assistant attorney general, argued before the court that all of [Proposition] 13's provisions relate to 'the common purpose of lowering taxes.'").

19. See *infra* notes 71-74, 134-39, 157-67 and accompanying text.

20. 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).

21. "[W]e have concluded that article XIII A survives each of the substantial challenges

served "analysis of the problems which may arise respecting the interpretation or application of particular provisions of the [article] . . . for future cases in which those provisions are more directly challenged." <sup>22</sup>

Three years later, the problem of the proper interpretation of section 4 reached the supreme court. *Los Angeles County Transportation Commission v. Richmond*<sup>23</sup> posed a direct challenge to section 4, which provides that "[c]ities, counties and special districts, by a two-third vote . . . , may impose special taxes."<sup>24</sup> In a plurality decision,<sup>25</sup> the court held that the term "special districts," as used in section 4, referred only to those districts empowered to levy a tax on real property.<sup>26</sup> The effect of the court's definition was to narrow the application of section 4, consistent with previous decisions which had limited the reach of Proposition 13.<sup>27</sup> The rule of strict construction adopted in *Richmond*,

---

raised by petitioners." *Id.* at 248, 583 P.2d at 1302, 149 Cal. Rptr. at 259. Proposition 13 was challenged as being a revision rather than an amendment to the California Constitution, *id.* at 221, 583 P.2d at 1284, 149 Cal. Rptr. at 242; as containing more than one subject, *id.* at 229, 583 P.2d at 1289, 149 Cal. Rptr. at 247; as violative of equal protection, *id.* at 232, 583 P.2d at 1292, 149 Cal. Rptr. at 250; as interfering with the constitutional right to travel, *id.* at 237, 583 P.2d at 1295, 149 Cal. Rptr. at 253; as impairing contracts, *id.* at 238, 583 P.2d at 1295, 149 Cal. Rptr. at 253; as having a misleading title and summary, *id.* at 242, 583 P.2d at 1298, 149 Cal. Rptr. at 256; and as unconstitutionally vague, *id.* at 244, 583 P.2d at 1299, 149 Cal. Rptr. at 257.

22. *Id.* at 219, 583 P.2d at 1283, 149 Cal. Rptr. at 241 (quoting *County of Nevada v. MacMillen*, 11 Cal. 3d 662, 666, 552 P.2d 1345, 1347, 114 Cal. Rptr. 345, 347 (1974)). Subsequent cases that have construed Proposition 13 include *Carman v. Alvord*, 31 Cal. 3d 318, 644 P.2d 192, 182 Cal. Rptr. 506 (1982) (construing the term indebtedness in section 1); *Board of Supervisors v. Lonergan*, 27 Cal. 3d 855, 616 P.2d 802, 167 Cal. Rptr. 820 (1980) (construing date on which property tax rollback effective in section 1), *cert. denied*, 450 U.S. 918 (1981); *Los Angeles County Transp. Comm'n v. Richmond*, 31 Cal. 3d 197, 643 P.2d 941, 182 Cal. Rptr. 324 (1982) (construing "special districts" in section 4); *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (1982) (construing "special taxes" in section 4).

23. 31 Cal. 3d 197, 643 P.2d 941, 182 Cal. Rptr. 324 (1982).

24. CAL. CONST. art. XIII A, § 4. *See also* 31 Cal. 3d at 201, 643 P.2d at 943, 182 Cal. Rptr. at 326.

25. The court vote split 5 - 1 on the interpretation of "special districts." Justice Richardson was the only dissenter. Justice Mosk, joined by Chief Justice Bird and Justice Broussard, used a rule of strict construction to reach his conclusion. *See infra* note 103 and accompanying text. The concurring justices, Justice Kaus and Justice Newman, did not address the rule of construction to be applied but agreed with the plurality on the interpretation of "special district." *See infra* note 126 and accompanying text. Justice Richardson reached his conclusion with a rule of liberal construction. *See infra* notes 118-19 and accompanying text.

26. 31 Cal. 3d at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

27. *See, e.g.*, *Board of Supervisors v. Lonergan*, 27 Cal. 3d 855, 616 P.2d 802, 167 Cal. Rptr. 820 (1980) (delaying Proposition 13's effective date as to specific type of property, court used a rule of harmonization of differing parts of the California Constitution, as op-

however, represents an apparent departure from the rule of liberal construction traditionally applied to direct legislation.<sup>28</sup>

Initially, this Note analyzes the court's interpretation of section 4 itself. It then examines the California initiative process, the two-thirds vote requirement, and the doctrine of local control as possible justifications for the court's departure from the rule of liberal construction for the interpretation of initiatives.

The *Richmond* court, based on its interpretation of section 4 alone, could have limited its ruling to a holding that a two-thirds vote requirement is applicable whenever a locality attempts to levy a tax to replace lost property tax revenues. This result would not mandate a rule of strict construction. Nonetheless, a rule of strict construction has been established as a precedent for subsequent section 4 interpretations of "special taxes."<sup>29</sup>

While neither the facts of *Richmond* nor the court's arguments support the application of a rule of strict interpretation to all future initiatives, the decision represents an incursion into the rule of liberal construction of initiatives. Indeed, the primary significance of *Richmond* lies in its implications concerning the proper role of the courts in interpreting direct legislation by the voters.<sup>30</sup> As a result, it will be easier to impose a rule of strict construction on future initiative interpretations.

## II. STATEMENT OF THE CASE

Section 130350 of the California Public Utilities Code,<sup>31</sup> enacted

---

posed to either a rule of strict or liberal interpretation). While a taxpayer may regard anything paid to the government as tax, the courts of appeal have limited the charges which come within the ambit of Proposition 13. *See Solvang Mun. Improvement Dist. v. Board of Supervisors*, 112 Cal. App. 3d 545, 169 Cal. Rptr. 391 (1980) (special assessment is a charge on property to compel payment for the benefit to a particular property and is not a tax in the constitutional sense); *Mills v. County of Trinity*, 108 Cal. App. 3d 656, 166 Cal. Rptr. 674 (1980) (fee is not a "special tax" within section 4; no rule of construction adopted); *County of Fresno v. Malmstrom*, 94 Cal. App. 3d 974, 156 Cal. Rptr. 777 (1979) (special assessment is not a "special tax" within section 4; no rule of construction adopted).

28. *See* 22 Cal. 3d at 219, 583 P.2d at 1283, 149 Cal. Rptr. at 241 ("[T]he power of the initiative must be liberally construed . . . to promote the democratic process." (quoting *San Diego Bldg. Contractors Ass'n v. City Council*, 13 Cal. 3d 205, 210 n.3, 529 P.2d 570, 572 n.3, 118 Cal. Rptr. 146, 148 (1974))). *See also infra* notes 128-29 and accompanying text.

29. After the *Richmond* case, the court used a rule of strict construction without discussion of the voters' intent in *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (1982), to reach an interpretation of the term "special taxes" in section 4. *See infra* notes 205-08 and accompanying text.

30. *See infra* notes 210-31 and accompanying text.

31. CAL. PUB. UTIL. CODE § 130350 states:

in 1976, authorizes the Los Angeles County Transportation Commission (LACTC)<sup>32</sup> to levy a sales tax to raise revenue for transportation within the Commission's district. The statute requires that any tax be approved by a majority of the local voters.<sup>33</sup> In 1980 the Commission received 54% voter approval for a 1/2% sales tax.<sup>34</sup> Two years earlier, however, Los Angeles County voters had approved Proposition 13 by a 67% majority.<sup>35</sup> George Richmond, the Commission's executive director, refused to implement the approved tax on the advice of the Attorney General<sup>36</sup> that section 4 of Proposition 13 required a two-thirds majority for approval of the tax.<sup>37</sup>

At issue in *Richmond* were the definitions of two ambiguous terms found in section 4: "special districts" and "special taxes."<sup>38</sup> Yet the definition of "special districts" which emerged is a minor point, for the *Richmond* court proceeded to define, as well, the intent of the voters who approved section 4. Each of the three separate opinions in *Richmond* argued, consistent with *Amador*, that in passing section 4, the voters intended that "special taxes" used to replace property tax revenues lost because of Proposition 13 be approved by a two-thirds vote.<sup>39</sup>

A majority of the court (five justices)<sup>40</sup> concluded that the two-thirds vote requirement of section 4 did not apply to LACTC's sales tax because the Los Angeles County Transportation District was not a "special district" within the meaning of section 4. The LACTC was not empowered to levy property taxes and therefore had no lost property

---

A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.

CAL. PUB. UTIL. CODE § 130350 (West 1973 & Supp. 1983).

32. The LACTC is a special district created by the legislature. *Id.* § 130050. Its government is separate and distinct from that of Los Angeles County. *Id.* § 130051. The County Transportation Commissions Act, passed in 1976, was designed to establish districts which were concerned only with transportation. *Id.* § 130001.

33. *Id.* § 130350.

34. 31 Cal. 3d at 200, 643 P.2d at 942, 182 Cal. Rptr. at 325.

35. CAL. SECRETARY OF STATE, STATEMENT OF VOTE 39 (June 1978).

36. 64 Op. Cal. Att'y Gen. 156 (1981).

37. 31 Cal. 3d at 200, 643 P.2d at 942, 182 Cal. Rptr. at 325.

38. CAL. CONST. art. XIII A, § 4; *see supra* note 16.

39. 31 Cal. 3d at 206, 643 P.2d at 946, 182 Cal. Rptr. at 329; *id.* at 209, 643 P.2d at 948, 182 Cal. Rptr. at 331 (Kaus, J., concurring); *id.* at 214-15, 643 P.2d at 951-52, 182 Cal. Rptr. at 334-35 (Richardson, J., dissenting) (using the word "substitute" rather than "replacement").

40. *See infra* notes 75-77 and accompanying text.

tax revenues to replace.<sup>41</sup> The majority, therefore, held that the LACTC could enact a sales tax with simple majority approval.<sup>42</sup>

"Replacement of lost property tax revenues" does not, however, emerge as the rule of *Richmond* to be applied in subsequent section 4 interpretation cases. Rather, the plurality established a rule of strict construction to be used when interpreting section 4 which overshadows the court's resolution of the specific issue which was before it.<sup>43</sup>

### III. BACKGROUND OF THE CASE

#### A. Proposition 13: The Initiative Campaign

The drive for Proposition 13 was the result of well intentioned reform as well as inflation. The Assessment Reform Act of 1966 required county assessors to assess all property at a uniform 25% of market value and to reassess all property as market values changed.<sup>44</sup> Prior to the Act, assessors had set the fractional value of the property that would be assessed. While there had been some underassessments of business properties in return for campaign contributions to local assessors,<sup>45</sup> family dwellings had been assessed at a lower fraction of value relative to business properties in the early 1960's.<sup>46</sup> The immediate effect of the Assessment Reform Act, consequently, was to increase the tax bills on single family homes.<sup>47</sup>

---

41. 31 Cal. 3d at 201, 643 P.2d at 943, 182 Cal. Rptr. at 326; *id.* at 208-09, 643 P.2d at 948, 182 Cal. Rptr. at 331 (Kaus, J., concurring).

42. *Id.* at 201-02, 643 P.2d at 943, 182 Cal. Rptr. at 326.

43. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

44. CAL. REV. & TAX. CODE § 401 (West 1980). The Assessment Reform Act of 1966 added to or amended 105 sections of 5 different codes. EHRMAN & FLAVIN, *supra* note 6, at 21. The effect of the Assessment Reform Act in an inflationary period was illustrated in a Wall Street Journal article. "Say a group of 50 homes sold originally for \$50,000 and one now sells for \$150,000. All other homes are bumped to an equivalent value [for property tax purposes] . . ." Wanniski, *The California Tax Revolt*, Wall St. J., May 24, 1978, at 22, col. 4.

45. Keppel, *Property Taxes and the Revolt*, L.A. Times, May 9, 1978, § II, at 1, col. 2.

46. Levy, *On Understanding Proposition 13*, 56 THE PUBLIC INTEREST 66 (Summer 1979) [hereinafter cited as Levy]. For example, in San Francisco, single-family housing was assessed at about 9% of market value, whereas commercial buildings were assessed at about 35%. In Alameda County, single-family housing was assessed at 22%, commercial property at 28%. *Id.* at 68-69. See also CAL. ASSEMBLY COMM. ON REV. & TAX., PROBLEMS OF PROPERTY TAX ADMINISTRATION IN CALIFORNIA 20-38 (Dec. 1966); Keppel, *Property Taxes and the Revolt*, L.A. Times, May 9, 1978, § II, at 1, col. 2 ("Assessors had always calculated values 'toward' what a given property would presumably bring on the open market. Their assessments consequently were always some fraction of market value. And the unique role of residential property, as opposed to commercial holdings, was reflected by an appreciably lower ratio of assessed value to market value applied to homes.").

47. See *supra* note 45.



Residential property tax bills rose sharply during the 1970's. From 1975 to 1978, the assessed valuation of owner-occupied residential property rose 110%;<sup>48</sup> the property taxes paid by homeowners during this period increased 91%, rising from 32% to 44.3% of total property taxes paid.<sup>49</sup> Proposition 13 found a ready constituency in the 55% of California voters who occupied their own homes.<sup>50</sup>

Notably, throughout this period, legislators could claim that they had not raised property taxes. The *tax rate* remained the same.<sup>51</sup> Inflation, however, was increasing the market value—the *tax base*—of homes. The state, which did not levy a residential property tax, was beginning to accumulate a budget surplus which reached \$8.7 billion in invested funds during 1978.<sup>52</sup>

Previous initiatives directed toward both property tax and general tax relief had not been successful. The voters had defeated by a two to one margin a 1968 initiative which proposed that property taxes be used only for property related services; that the state government, as opposed to local governments, assume responsibility for social services such as education, health and welfare; and that property taxes be limited to 1% of current market value.<sup>53</sup> An initiative proposed in 1973 by then Governor Reagan to limit government spending had failed by a similar margin.<sup>54</sup> Both Howard Jarvis and Paul Gann, initiators of Proposition 13, introduced tax initiatives in 1970 and 1976 which failed to obtain sufficient voter signatures to qualify for the ballot.<sup>55</sup>

Unlike the earlier campaigns, however, Proposition 13's was well-timed. It occurred during a period of shifting property tax burdens, rapid inflation that caused both upward reassessments of property val-

---

48. Kuttner & Kelston, *The Shifting Property Tax Burden*, 2 PUBLIC POLICY REPORT 11 (Conference on Alternative State and Local Policies 1979) (citing CAL. LEGISLATIVE ANALYST, AN ANALYSIS OF PROPOSITION 13: THE JARVIS-GANN INITIATIVE (May 1978)).

49. Oakland, *supra* note 11, at 38. This is not to say that other taxes were not increasing during the same period—the assessed value of business property increased 26.4%. *Id.*

50. Quirt, *supra* note 3, at 75.

51. Wanniski, *The California Tax Revolt*, Wall St. J., May 24, 1978, at 22, col. 4.

52. Research Department, Federal Reserve Bank of San Francisco, *Liquidating California's Surplus*, FRB SF WEEKLY LETTER 1 (June 30, 1978). Estimates of the surplus, however, varied. See Oakland, *supra* note 11, at 40 (\$7.1 billion budget surplus estimated for 1978-1979); Levy, *supra* note 46, at 80 (\$6.1 billion surplus not including federal revenue sharing funds); CAL. LEGISLATIVE ANALYST, AN ANALYSIS OF PROPOSITION 13 191-92 (May 1978) (\$3 billion general budget surplus).

53. Proposition 9, CAL. SECRETARY OF STATE, STATEMENT OF VOTE 30 (Nov. 1968). Proposition 14, a similarly worded initiative in 1972, also failed to win voter approval. CAL. SECRETARY OF STATE, STATEMENT OF VOTE 29 (Nov. 1972).

54. Proposition 1, CAL. SECRETARY OF STATE, STATEMENT OF VOTE 5 (Nov. 1973).

55. Levy, *supra* note 46, at 74.

ues and bracket creep<sup>56</sup> on income tax returns, and a state budgetary surplus.<sup>57</sup> Volunteer petition circulators were able to gather 1,264,000 signatures within a three month period,<sup>58</sup> more than twice the number required to qualify the initiative for the ballot.<sup>59</sup>

Perceptions of the initiative differed considerably, Proposition 13 being viewed variously as a way to control property taxes, as a way "to send a message" to Sacramento that voters were tired of high taxes,<sup>60</sup> and as a way to limit government spending.<sup>61</sup> Supporters claimed that property taxes could be reduced without impairing vital governmental services, that only bureaucratic waste would be cut,<sup>62</sup> and that rents would decrease as landlords passed on property tax savings to tenants.<sup>63</sup> Some economists predicted that Proposition 13 would be a boon to government treasuries.<sup>64</sup> In theory, the lower property tax

---

56. "Bracket creep" describes the phenomenon whereby a taxpayer, whose real income has not increased, is pushed into a higher tax bracket due to inflation. As his or her real income remains static, the taxpayer pays a higher proportion of that income in taxes.

57. See *supra* note 52 and accompanying text.

58. EHRMAN & FLAVIN, *supra* note 6, at 29.

59. The fact that Proposition 13 qualified for the ballot with volunteer petition circulators is significant. In California where petition circulators are generally hired workers paid an amount determined by the number of signatures gathered, "it was standard practice for California special-interest groups to hire a firm to collect the signatures for a ballot measure. . . . The collectors were reportedly paid from 25 to 50 cents per signature." Fitzgerald, *Computer Democracy*, 11 CALIF. J. 1, 6 (June 1980 Special Supp.).

60. *Getting the Message*, L.A. Times, Apr. 30, 1978, § V, at 4, col. 1 ("Vote Yes on Proposition 13 and send Sacramento a message that you are sick and tired of high taxes."); L.A. Times, May 28, 1978, § II, at 1, col. 1 ("The pervasive theme, Jarvis believes, is that homeowners are mad as hell over property taxes and are finally ready to strike back at Sacramento."). This view was widely held despite the fact that property tax revenue is collected and spent primarily by local entities. See Gould, *The California Tax System*, CAL. REV. & TAX. CODE 95 (West 1970). By 1978, state property tax collection was limited to taxes on railroad cars. See CAL. REV. & TAX CODE §§ 11201-753.

61. L.A. Times, Apr. 11, 1978, § II, at 6, col. 3L (Letters to the Editor) ("Its attractiveness to most California taxpayers lies not in [Proposition 13's] rigid formulas to reduce property taxes, but its more general potential for slamming the brakes on runaway spending.").

62. CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 58, 59 (June 1978) (arguments in favor of Proposition 13).

63. *Id.*

64. Jude Wanniski, *supra* note 51, commented:

Prof. Neil Jacoby of the UCLA Business School makes [the argument that Proposition 13 will mean more, not less revenue to state and local governments] as does Prof. Arthur Laffer of the USC Business School. Both see [Proposition 13] expanding the tax base.

Mr. Jacoby argues that there will be a building and renovation boom once people can be sure they won't be penalized for adding a new porch to their house or committing funds for a new factory. Not only would this boost the property tax base—helping to offset any direct revenue loss from lower property tax rates—but it would stimulate personal and business income, thus expanding the income tax base.

would increase the state's ability to attract business investment. Increased business investment would in turn increase the tax base, leading to higher tax revenues. Proposition 13's critics, however, contended that if the initiative became law, there would be, at the very least, considerable disruption in the flow of public services.<sup>65</sup> Opponents also noted that the tax reduction benefits would be enjoyed more by businesses than by homeowners.<sup>66</sup>

With the exception of its authors, supporters and opponents of the initiative alike agreed that it was poorly drafted. Certainly, the measure was both loosely written and ambiguous.<sup>67</sup> It was inevitable that the courts would play a major role in the interpretation of Proposition 13.<sup>68</sup>

### B. Amador: *The Initial Interpretation*

An understanding of the *Richmond* decision requires an initial consideration of the California Supreme Court's opinion in *Amador Valley Joint Union High School District v. State Board of Equalization*.<sup>69</sup> The *Amador* court found it necessary to determine the purpose of Proposition 13 to resolve a challenge based on the constitutional

---

65. *California: Taxpayer's Revolt*, NEWSWEEK, Mar. 6, 1978, at 30. Leo McCarthy, State Assembly Speaker, predicted that the initiative "would strip police services, fire services, recreation services, . . . destroy the school systems in the state." *Id.*

66. CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 59-60 (June 1978) (Opponents' statement) ("Homeowners and renters are most in need of property tax relief. But Proposition 13 gives two-thirds of the property tax decrease to commercial and industrial property owners.").

67. The legislative analyst stated in the Voter's Pamphlet: "In several instances the exact meaning of language used in this measure is not clear." CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 56 (June 1978). Milton Freidman, Nobel Prize winner in Economics and a supporter of Proposition 13, commented: "Jarvis-Gann has many defects. It is loosely drawn." Freidman, *A Progress Report*, NEWSWEEK, Apr. 10, 1978, at 70. Donald Hagman, the UCLA Law Professor who suggested that Proposition 13 had the consistency of yogurt, was quoted as facetiously advocating that "the authors of [Proposition 13] might be arrested for drunken drafting." L.A. Times, Aug. 11, 1982, § II, at 9, col. 4. The *California Journal* suggested that "[h]ad [Howard Jarvis and Paul Gann] ever dreamed they would become the drum majors for a parade starting in Los Angeles and Sacramento and playing to record crowds all the way to the Atlantic coast," they undoubtedly would have taken more care with the language of Proposition 13. 9 CALIF. J. 216 (July 1978).

68. Perhaps because it was poorly drafted, Proposition 13 became many things to many people. See *supra* notes 60-61. The diverse interpretations help to explain the hostility with which some people regard the court's Proposition 13 decisions. See California Tax Reduction Movement, *Save Proposition 13 from Supreme Court Threat* (computer mailing solicitation for funds) ("In seven consecutive cases, the Court has ruled against us taxpayers, and against the *clear* meaning of Proposition 13." (emphasis added)).

69. 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).

"one subject" requirement.<sup>70</sup> The *Amador* court viewed the four major elements of Proposition 13—real property tax limitation, real property assessment limitation, state tax restriction, and local tax restriction as "reasonably interrelated and interdependent . . . reasonably germane, and functionally related, to the general subject of property tax relief."<sup>71</sup>

The court did not, however, clearly isolate the purpose of Proposition 13; in fact, it stated the purpose in two subtly different ways. Initially, the court declared that "[Proposition 13] is limited to the single subject of taxation (with particular emphasis on real property tax)."<sup>72</sup> Then, after stating that the subject of Proposition 13 was "property tax relief,"<sup>73</sup> the court continued three paragraphs later to discuss the single subject requirement, explaining that "[e]ach of the four basic elements of [Proposition 13] was designed to interlock with the others to assure an effective tax relief program."<sup>74</sup> Whether the purpose of Proposition 13 is viewed as *property tax relief* or simply as *tax relief*, of course, significantly alters the scope and effect of the initiative. The *Richmond* majority and dissent focused on the ambiguity created by the *Amador* opinion.

#### IV. REASONING OF THE COURT

A convenient way to examine the *Richmond* opinion is to make two distinct inquiries—the first into the court's interpretation of the voters' intent in passing Proposition 13 and the second into the rule of construction the court applied to the voters' intent to reach an interpretation of section 4.

The decision in *Richmond* was a plurality decision. However, five justices, three justices forming the plurality,<sup>75</sup> plus the two who signed the concurring opinion,<sup>76</sup> agreed that a "special district," for section 4 purposes, is a district with the authority to levy a property tax.<sup>77</sup> The

---

70. CAL. CONST. art. II, § 8(d) provides: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

71. 22 Cal. 3d at 231, 583 P.2d at 1290-91, 149 Cal. Rptr. at 248-49 (citing *Perry v. Jordan*, 34 Cal. 2d 87, 207 P.2d 47 (1949)).

72. *Id.* at 224, 583 P.2d at 1286, 149 Cal. Rptr. at 244.

73. *Id.* at 231, 583 P.2d at 1290, 149 Cal. Rptr. at 248.

74. *Id.* at 232, 583 P.2d at 1291, 149 Cal. Rptr. at 249.

75. Justice Mosk wrote the plurality opinion in which Chief Justice Bird and Justice Broussard joined.

76. Justice Kaus concurred in the judgment, joined by Justice Newman.

77. See 31 Cal. 3d at 201, 643 P.2d at 943, 182 Cal. Rptr. at 326 ("[A] governmental body like LACTC, which does not have the power to levy a property tax, is not the type of 'special district' governed by the section."); *id.* at 209, 643 P.2d at 948, 182 Cal. Rptr. at 331 (Kaus, J., concurring) ("[I]t appears sensible under ordinary principles of constitutional in-

plurality proceeded to state that this definition resulted from the application of a rule of strict construction to the voters' intent of real property tax relief.<sup>78</sup> The two concurring justices,<sup>79</sup> however, while agreeing with the plurality's interpretation of special district and the voters' intent, did not find it necessary to discuss the issue of the proper rule of construction. Justice Richardson, the lone dissenter, concluded that whatever a "special district" may be, LACTC is certainly within that definition.<sup>80</sup>

### *A. The Plurality Opinion*

#### 1. Interpretation of section 4

The plurality identified the goal of Proposition 13 as "real property tax relief."<sup>81</sup> Its inquiry into the language of section 4 was limited to the interpretation of "special districts."<sup>82</sup>

The plurality acknowledged that the language of the initiative itself was ambiguous, noting that "special districts" had been given both general<sup>83</sup> and limited<sup>84</sup> definitions at the time Proposition 13 was written—definitions which would both include and exclude the LACTC. Furthermore, the plurality observed, legislation enacted after the passage of Proposition 13, and with the measure in contemplation, offered no plain guidance to the meaning of "special districts."<sup>85</sup> Consequently, support for both a broad and limited definition can be found in contemporaneous legislation. Justice Mosk referred to section 50077

---

terpretation to construe section 4's reference to 'special districts' to apply only to those special districts which had the authority to impose property taxes . . .").

78. 31 Cal. 3d at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328 ("[T]he language of section 4 must be strictly construed . . .").

79. Justice Kaus and Justice Newman.

80. 31 Cal. 3d at 209-10, 643 P.2d at 948, 182 Cal. Rptr. at 331 (Richardson, J., dissenting) ("[T]he ordinance is invalid both because the tax it purports to enact is a 'special tax' and because it has been adopted by a 'special district' without the approval of two-thirds of the qualified voters thereof, in violation of article XIII A, section 4.").

81. 31 Cal. 3d at 201, 643 P.2d at 943, 182 Cal. Rptr. at 326.

82. *Id.* at 201-02, 643 P.2d at 943, 182 Cal. Rptr. at 326. The plurality did not reach a definition of "special taxes." According to the reasoning of the plurality, if the LACTC were not a "special district," neither it nor any taxes it might levy would come within the ambit of section 4. *Id.*

83. *Id.* at 202, 643 P.2d at 943, 182 Cal. Rptr. at 326 (A "special district" is "a legally constituted governmental entity established for the purpose of carrying on specific activities within defined boundaries." (quoting SEN. FACT FINDING COMM. ON REV. & TAX., INTER-GOVERNMENTAL FISCAL RELATIONS IN CAL. 177 (June 1965))).

84. 31 Cal. 3d at 202, 643 P.2d at 943-44, 182 Cal. Rptr. at 329 ("[S]ome statutes exclude from the definition of 'special district' 'any agency which is not authorized by statute to levy a property tax rate.'" (quoting CAL. REV. & TAX. CODE § 2215 (West 1980))).

85. 31 Cal. 3d at 206, 643 P.2d at 946, 182 Cal. Rptr. at 329.

of the Government Code, which defines a district for purposes of Proposition 13 as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries"<sup>86</sup> and concluded that this definition could include the LACTC.<sup>87</sup> However, he also cited section 16271 of the Government Code which contains a definition of "special district" which would exclude the LACTC by excluding "any agency which is not authorized to levy a property tax, except the Bay Area Pollution District."<sup>88</sup>

The material in the Voter's Pamphlet, however, persuaded the plurality that "special districts" should be read narrowly.<sup>89</sup> Justice Mosk cited the legislative analyst's statement that "[Proposition 13] would restrict the ability of local governments to impose new taxes in order to *replace* the property tax revenue losses."<sup>90</sup> From this, the plurality concluded that "[s]ince only those 'special districts' which levied property taxes could 'replace' the 'loss' of such taxes, [the legislative analyst's statement] impl[ie]d that the 'special districts' referred to are those which are authorized to levy a property tax."<sup>91</sup>

## 2. Rule of construction

The plurality conceded that a narrow reading of "special district" was not compelled.<sup>92</sup> Then, however, breaking established precedent,<sup>93</sup> the plurality proceeded to argue that the language of section 4 should be strictly construed.<sup>94</sup> The court justified this position with a discus-

86. CAL. GOV'T CODE § 50075 (West 1980).

87. 31 Cal. 3d at 206-07, 643 P.2d at 946-47, 182 Cal. Rptr. at 329-30. Justice Mosk noted that while section 50077 uses the term "district" as opposed to "special district," section 50077 was enacted to implement Proposition 13 which uses the term "special district."

88. *Id.* at 206, 643 P.2d at 946, 182 Cal. Rptr. at 329 (citing CAL. GOV'T CODE § 16271(d) (West 1980); *accord* CAL. REV. & TAX. CODE § 2215 (West 1980)).

89. 31 Cal. 3d at 205, 643 P.2d at 946, 182 Cal. Rptr. at 328-29.

90. *Id.* at 206, 643 P.2d at 946, 182 Cal. Rptr. at 329 (quoting CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 60 (June 1978)).

91. 31 Cal. 3d at 206, 643 P.2d at 946, 182 Cal. Rptr. at 329.

92. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

93. The plurality reiterated the guidelines set forth in *Amador*, 22 Cal. 3d at 245, 583 P.2d at 1299-1300, 149 Cal. Rptr. at 257-58 (A constitutional provision "should be construed in accordance with the natural and ordinary meaning of its words . . . . The literal language . . . may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers . . . and the language used must 'receive a liberal, practical, common-sense construction.'") (emphasis added by the plurality) (citations omitted)). 31 Cal. 3d at 202-03, 643 P.2d at 944, 182 Cal. Rptr. at 327. The plurality acknowledged that it was departing from the established rule. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

94. 31 Cal. 3d at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328 ("In view of the fundamen-

sion of the two-thirds vote requirement and, secondarily, with a discussion of local control.

The plurality began its justification of strict construction with the forceful statement that a super-majority vote requirement is inherently undemocratic.<sup>95</sup> While acknowledging that the constitutionality of the requirement itself was not at issue,<sup>96</sup> the plurality, nonetheless, found it appropriate to examine both the effect and the subject of the extraordinary majority requirement.<sup>97</sup>

The court noted that the effect of a two-thirds approval requirement is to give voters opposing a measure two votes while those favoring it have but one.<sup>98</sup> In addition, the requirement generally acts to deter the proposed action since such a high degree of agreement is unusual.<sup>99</sup> The plurality also noted that the usual justifications for imposing a two-thirds vote requirement were missing in *Richmond*.<sup>100</sup>

The plurality also examined the subject of the two-thirds vote requirement.<sup>101</sup> The greater the extent to which a vote pertains to a purely local concern, the plurality reasoned, the less appropriate a two-thirds vote requirement imposed by statewide voters. Because the taxes in *Richmond* were *local* sales taxes for *local* transportation purposes, the burden of which would be borne largely by the *local* population, the vote required to approve the tax should not be a statewide voter's concern. The plurality emphasized that the matter was a purely local concern.<sup>102</sup>

In light of the fundamentally undemocratic nature of the two-

---

tally undemocratic nature of the requirement for an extraordinary majority and the matters discussed above, the language of section 4 must be strictly construed . . . .").

95. *Id.*

96. *Id.* at 203, 643 P.2d at 944, 182 Cal. Rptr. at 327. In *Westbrook v. Mihaly*, 2 Cal. 3d 765, 471 P.2d 487, 87 Cal. Rptr. 839 (1970), *vacated sub nom. Mihaly v. Westbrook*, 403 U.S. 915 (1970), *cert. denied*, 403 U.S. 922 (1971), the California Supreme Court held a two-thirds vote requirement for local bonds unconstitutional on federal equal protection grounds. The United States Supreme Court, in *Gordon v. Lance*, 403 U.S. 1 (1971), held, however, that such a requirement was unconstitutional only if it discriminated against an identifiable class. *Id.* at 7.

97. 31 Cal. 3d at 203-04, 643 P.2d at 944, 182 Cal. Rptr. at 327.

98. 31 Cal. 3d at 204, 643 P.2d at 945, 182 Cal. Rptr. at 328 (citing *Gordon v. Lance*, 403 U.S. at 6; *Westbrook v. Mihaly*, 2 Cal. 3d at 783, 471 P.2d at 499, 87 Cal. Rptr. at 851).

99. 31 Cal. 3d at 204, 643 P.2d at 944, 182 Cal. Rptr. at 328 (quoting *Westbrook v. Mihaly*, 2 Cal. 3d at 792, 471 P.2d at 506, 87 Cal. Rptr. at 858).

100. Two of the justifications cited by the Supreme Court in *Gordon* were the protection of property and the credit of the unborn. 403 U.S. at 6. The plurality in *Richmond* argued that a local sales tax did not interfere with any fundamental individual rights. 31 Cal. 3d at 204, 643 P.2d at 945, 182 Cal. Rptr. at 328.

101. *Id.*

102. *Id.*

thirds vote requirement *and* the purely local impact and character of the LACTC's tax, the plurality concluded that "the language of section 4 must be strictly construed and ambiguities resolved in favor of permitting voters of cities, counties and 'special districts' to enact 'special taxes' by a majority rather than a two-thirds vote."<sup>103</sup>

### B. *The Dissenting Opinion*

#### 1. Interpretation of section 4

In his dissent, Justice Richardson identified the goal of Proposition 13 as both effective real *property tax* relief<sup>104</sup> and *tax* relief.<sup>105</sup> His inquiry extended to the term "special taxes" as well as "special districts."<sup>106</sup>

The language of the initiative itself suggested to Justice Richardson that the LACTC is a "special district."<sup>107</sup> He considered the taxing limitations imposed by Proposition 13 comprehensive.<sup>108</sup> Urging a parallel construction between sections 3 and 4, he noted that because section 3 requires a two-thirds vote by the state legislature to impose *any* new taxes, section 4 should be interpreted to require a two-thirds vote for *any* local tax, regardless of the identity of the entity imposing the tax.<sup>109</sup> Consequently, the LACTC would be within the ambit of section 4. Again focusing on the language of the initiative, he concluded that the word "special" in "special taxes" should be interpreted broadly to mean "extra" or "additional" rather than narrowly to mean "unusual" or "extraordinary."<sup>110</sup>

Justice Richardson also found support in contemporaneous legis-

103. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

104. 31 Cal. 3d at 211, 643 P.2d at 949, 182 Cal. Rptr. at 332 (Richardson, J., dissenting) ("We concluded that these four elements formed 'an interlocking "package" deemed necessary by the initiative's framers to assure *effective real property tax relief*.'" (*emphasis in original*)).

105. *Id.* at 215, 643 P.2d at 952, 182 Cal. Rptr. at 335 ("[I]t is apparent that the broadest possible definition of 'special taxes' would best serve that objective of tax relief.>").

106. *See supra* note 82.

107. 31 Cal. 3d at 214, 643 P.2d at 951, 182 Cal. Rptr. at 334.

108. "The two-thirds voter approval requirement has been constitutionally ordained not only for tax increases instituted by *counties, cities and special districts* (§ 4), but also tax increases implemented by the state Legislature itself (§ 3)." *Id.*

109. "To recognize an otherwise undefined *residual* category of local government agencies, 'nonspecial districts' as it were, which are free to impose new or increased taxes without the two-thirds vote approval requirement is anomalous at best." *Id.*

110. "In my view, the most natural 'ordinary' meaning of the term 'special taxes' within the context of article XIII A includes the kind of substitutional or replacement tax adopted by LACTC which serves to offset the reduction of real property taxes enforced by sections 1 and 2 of the amendment." *Id.* at 218, 643 P.2d at 954, 182 Cal. Rptr. at 337.



lation for his assertion that the LACTC was a "special district." Noting that the broad definition of the term "district" contained in Government Code section 50077 would include the LACTC,<sup>111</sup> he reasoned that section 50077 should control because it was passed in "[a]n obvious attempt to comply with the constitutional directive of [Proposition 13]."<sup>112</sup>

As had the plurality, the dissent cited the legislative analyst's statement in the Voter's Pamphlet that "[t]he initiative would restrict the ability of local governments to impose new taxes in order to replace the property tax revenue losses."<sup>113</sup> Unlike the plurality, however, Justice Richardson concluded that the LACTC was a "special district" because it was *replacing* lost property tax revenues. He refuted the plurality's rationale that LACTC was not a "special district" because it had no authority to levy property taxes. "We nowhere suggested in *Amador* . . . that it was *only* those state or local agencies . . . empowered to levy real property taxes which were barred by the amendment from frustrating the objective of property tax relief."<sup>114</sup> He then reasoned that the LACTC was well within the ambit of section 4 because it performed a service (improvement of public transportation) "which could well be funded by receipts from a real property tax imposed by the county."<sup>115</sup> The sales tax levied by the LACTC, a special district, would *replace* lost property tax revenues that, but for Proposition 13, could have been levied and used by other local governments, either Los Angeles City or Los Angeles County, for public transportation.

The dissent also used the Voter's Pamphlet to conclude that the sales tax levied by the LACTC was a "special tax" within section 4. From statements of the legislative analyst<sup>116</sup> and the proponents of the initiative,<sup>117</sup> the dissent interpreted "special taxes" to mean "all" taxes.

---

111. CAL. GOV'T CODE § 50077(d) (West 1980) (district defined broadly as an agency of the state, formed pursuant to general law or special act for the local performance of government or proprietary functions within limited boundaries).

112. 31 Cal. 3d at 213-14, 643 P.2d at 951, 182 Cal. Rptr. at 334.

113. *Id.* at 215, 643 P.2d at 952, 182 Cal. Rptr. at 335 (quoting CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 60 (June 1978)).

114. 31 Cal. 3d at 212, 643 P.2d at 950, 182 Cal. Rptr. at 333 (Richardson, J., dissenting).

115. *Id.*

116. *Id.* at 216, 643 P.2d at 952, 182 Cal. Rptr. at 335 ("[N]ew taxes would have to be approved by two-thirds of local voters." (quoting CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 60 (June 1978))).

117. 31 Cal. 3d at 216, 643 P.2d at 952, 182 Cal. Rptr. at 335 ("[Proposition 13] *requires all other* tax raises to be approved by the people." (quoting CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 58 (June 1978) (Proponent's Arguments) (emphasis added by the dissent))).

## 2. Rule of construction

Justice Richardson stated the general rule that constitutional amendments are to be construed liberally<sup>118</sup> and noted further that the "specialness" of the initiative process required such a rule. "[T]he power of the initiative must be *liberally* construed . . . to promote the democratic process."<sup>119</sup> He contended that the plurality's justifications could not support a rule of liberal construction, reminding the plurality that the two-thirds vote requirement is constitutional.<sup>120</sup> Furthermore, he contended that the two-thirds vote requirement for local taxes was "defensible largely as the preserver of 'home rule' principles."<sup>121</sup>

### C. *The Concurring Opinion*

#### 1. Interpretation of section 4

Noting that the language of section 4 was far from clear, the concurring justices<sup>122</sup> relied on the Voter's Pamphlet to find that the purpose of section 4 was "to limit the authority of a city, county or special district to impose new 'special taxes' to *replace property tax revenue* that the city, county or special district lost as a result of the other portions of Proposition 13."<sup>123</sup> Justice Kaus, agreeing with the plurality, concluded that it would be "sensible" to construe "special districts" to mean only those districts which had the authority to impose property taxes, because only those districts could have lost property tax revenue which needed to be *replaced*. He further noted that this definition was not unique to the context of Proposition 13.<sup>124</sup> As had Justice Richardson in his dissent, Justice Kaus cited contemporaneous legislation as a

---

118. 31 Cal. 3d at 211, 643 P.2d at 949, 182 Cal. Rptr. at 332 (Primary goal "in interpreting constitutional language is to give full effect to the framer's objective . . . ." (quoting *Mills v. County of Trinity*, 108 Cal. App. 3d 656, 660, 166 Cal. Rptr. 674, 676 (1980)). See also *supra* note 93.

119. 31 Cal. 2d at 211, 643 P.2d at 949, 182 Cal. Rptr. at 332 (Initiative power reserved to the people in CAL. CONST. art. IV, § 1 "so that they may alter or reform government when the public good may require.") (quoting *San Diego Bldg. Contractors v. City Council*, 13 Cal. 3d 205, 210 n.3, 529 P.2d 570, 572-73 n.3, 118 Cal. Rptr. 146, 148-49 n.3 (1974)).

120. 31 Cal. 3d at 210, 643 P.2d at 948-49, 182 Cal. Rptr. at 331-32 (citing *Gordon v. Lance*, 403 U.S. 1, 7 (1971); *Amador v. State Bd. of Equalization*, 22 Cal. 3d at 237, 583 P.2d at 1294-95, 149 Cal. Rptr. at 252-53).

121. 31 Cal. 3d at 217, 643 P.2d at 953, 182 Cal. Rptr. at 336 (citing *Amador v. State Bd. of Equalization*, 22 Cal. 3d at 226-28, 583 P.2d at 1287-88, 149 Cal. Rptr. 245-47).

122. Justice Kaus and Justice Newman.

123. 31 Cal. 3d at 208-09, 643 P.2d at 948, 182 Cal. Rptr. at 331 (emphasis in original) (Kaus, J., concurring).

124. *Id.* at 209, 643 P.2d at 948, 182 Cal. Rptr. at 331.

source of the definitions of "special districts." Unlike the dissent, however, he chose statutes with a narrow definition of "special districts" which would exclude the LACTC.<sup>125</sup>

## 2. Rule of construction

The concurring opinion did not reach the question of the appropriate rule of construction, suggesting only that "ordinary principles of constitutional interpretation" be used to construe section 4.<sup>126</sup> The opinion did not make clear, however, what those "ordinary principles" are.

## V. ANALYSIS

### A. Interpretation of Section 4

In *Amador*, the California Supreme Court established a two-step method for judicial construction of Proposition 13.<sup>127</sup> First, the court must determine the intent of the voters in passing the initiative.<sup>128</sup> Then, the court must construe the language of the initiative so as to

---

125. *Id.* at 209 n.1, 643 P.2d at 948 n.1, 182 Cal. Rptr. at 331 n.1 (citing CAL. REV. & TAX. CODE § 2215 (West 1980); CAL. GOV'T CODE § 16271(d) (West 1980)).

126. *Id.* ("[I]t appears sensible under ordinary principles of constitutional interpretation to construe section 4's reference to 'special districts' to apply only to those special districts which had the authority to impose property taxes . . .").

127. 22 Cal. 3d at 244-46, 583 P.2d at 1299-1300, 149 Cal. Rptr. at 257-58. While the language of *Amador* may give the impression that initiative interpretation is a simple process of applying a set of rules of construction to unclear terms, an analysis of the cited cases suggests that the interpretation is at least a two-step process. A two-step process was used in *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972), where the court construed a provision of the California Environmental Quality Act of 1970.

In resolving the conflict on intent, as we must, we conclude that the Legislature intended the EQA to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. We also conclude that to achieve that maximum protection the Legislature necessarily intended to include within the operation of the act, private activities for which a government permit . . . for use is necessary.

*Id.* at 259, 502 P.2d at 1056, 104 Cal. Rptr. at 768.

128. 22 Cal. 3d at 245-46, 583 P.2d at 1300, 149 Cal. Rptr. at 258. *See also In re Quinn*, 35 Cal. App. 3d 473, 483, 110 Cal. Rptr. 881, 887 (1973) ("The courts must interpret a constitutional amendment to give effect to the intent of the voters adopting it." (citing *Kaiser v. Hopkins*, 6 Cal. 2d 537, 538 (1936))).

The question of voter intent is a recurrent theme in any Proposition 13 analysis case. *See L.A. Daily J.*, May 16, 1983, § I, at 1, col. 1 ("As with many other Proposition 13 cases that have plagued California courts since 1978, a key dispute in the case of *Armstrong v. County of San Mateo* [146 Cal. App. 3d 597, 194 Cal. Rptr. 294 (1983)] is what the California electorate meant in voting for the initiative.").

carry out the voters' intent.<sup>129</sup>

The *Amador* court listed several constructional aids properly employed by a court for resolving ambiguities in the language of the initiative.<sup>130</sup> A constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words;<sup>131</sup> ambiguities may be resolved by reference to contemporaneous construction by the legislature or administrative agencies charged with implementing the new enactment;<sup>132</sup> and the ballot summary and arguments and analysis presented to the electorate may be helpful in determining the probable meaning of uncertain language.<sup>133</sup>

1. What was the intent of the voters?<sup>134</sup>

The *Amador* court repeatedly stated that the underlying purpose of the four sections of Proposition 13 taken together was "effective real property tax relief."<sup>135</sup> Subsequent Proposition 13 cases have cited this objective as the purpose of the amendment.<sup>136</sup>

Sections 1 and 2 granted direct property tax relief. By themselves, however, sections 1 and 2 would provide shallow relief if other taxes could be raised immediately to compensate for revenue shortfalls

---

129. 22 Cal. 3d at 244-45, 583 P.2d at 1299-1300, 149 Cal. Rptr. at 257. See also *Stephens v. Chambers*, 34 Cal. App. 660, 663-64, 168 P. 595, 596 (1917) ("[A written constitution] is not to be interpreted according to narrow or super-technical principles, but liberally and on broad general lines, so that it may accomplish in full measure the objects of its establishment . . .").

130. 22 Cal. 3d at 245-46, 583 P.2d at 1300, 149 Cal. Rptr. at 257-58.

131. *Id.* at 245, 583 P.2d at 1300, 149 Cal. Rptr. at 257-58. See also *In re Quinn*, 35 Cal. App. 3d 473, 482, 110 Cal. Rptr. 881, 887 (1973).

132. 22 Cal. 3d at 245, 583 P.2d at 1300, 149 Cal. Rptr. at 258. See also *South Dakota v. Brown*, 20 Cal. 3d 765, 777, 576 P.2d 473, 481, 144 Cal. Rptr. 758, 766 (1978) ("We have held that . . . 'the contemporaneous administrative construction of the enactment by those charged with its enforcement and interpretation is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.' " (quoting *City of Los Angeles v. Rancho Homes, Inc.*, 40 Cal. 2d 764, 770-71, 256 P.2d 305, 308 (1953))).

133. 22 Cal. 3d at 245-46, 583 P.2d at 1300, 149 Cal. Rptr. at 258. See also *Carter v. Seaboard Fin. Co.*, 33 Cal. 2d 564, 580-81, 203 P.2d 758, 772 (1949) ("Recourse may be had, as an aid to interpretation, first to the summary prepared by the attorney general . . . and then to the arguments for and against the measure [presented] to the voters and set forth in the pamphlets accompanying the sample ballots and appearing immediately following the attorney general's summary.").

134. See *infra* notes 135-36, 138-40 and accompanying text.

135. 22 Cal. 3d at 230, 231, 243, 583 P.2d at 1290, 1291, 1296, 149 Cal. Rptr. at 248, 249, 256.

136. See, e.g., *Board of Supervisors v. Lonergan*, 27 Cal. 3d 855, 616 P.2d 802, 167 Cal. Rptr. 820 (1980), *cert. denied*, 450 U.S. 918 (1981); *County of Fresno v. Malmstrom*, 94 Cal. App. 3d 974, 156 Cal. Rptr. 777 (1979).

caused by the decrease in real property taxes. Viewed in conjunction with sections 1 and 2, sections 3 and 4 complement the primary goal of property tax relief; they insure that property tax savings achieved through sections 1 and 2 are not easily taxed away.<sup>137</sup> Any interpretation of section 4, consequently, should be consistent with the voter intent of "effective real property tax relief."

Yet the *Amador* court also suggested that the goal of Proposition 13 was general tax relief, not just property tax relief.<sup>138</sup> The fact that the ballot title for Proposition 13 was "A Tax Relief Measure,"<sup>139</sup> not "A Property Tax Relief Measure," lends support for such an interpretation. It is conceivable, therefore, that the voters understood the purpose of Proposition 13 to be total tax relief. Following this view, the provisions of sections 3 and 4 must be regarded as designed to function independently of sections 1 and 2. The effect of sections 3 and 4 would be to limit all other taxes. An interpretation of section 4 consistent with total tax relief would be, therefore, broader than an interpretation limited by the purpose "effective real property tax relief." Because of the two differing purposes announced in *Amador*, both the *Richmond* plurality and dissent were able to cite *Amador* as authority for their conflicting interpretations of section 4.

The three opinions in *Richmond* either explicitly (the plurality and the dissent) or implicitly (the concurrence) followed the steps set out in *Amador* to determine the intent of section 4. Each first considered the language of the section itself, next the contemporaneous construction by the legislature and finally the statements in the Voter's Pamphlet. In *Richmond*, the first two steps lead to inconclusive results. In each of the three opinions, the interpretation of the phrase "replacement of property taxes" found in the Voter's Pamphlet was the decisive factor.

#### *a. language of section 4*

The dictionary definition of "special" neither supports nor refutes

---

137. This interpretation is consistent with the tenor of the Proposition 13 campaign. In *Board of Supervisors v. Lonergan*, 27 Cal. 3d 855, 616 P.2d 802, 167 Cal. Rptr. 820 (1980), the court noted that "Proposition 13 was widely publicized as a taxpayer's revolt providing tax relief for homeowners." *Id.* at 864, 616 P.2d at 807, 167 Cal. Rptr. at 825. "But the single most inflammatory factor [presaging the adoption of Proposition 13], the one that fanned the flames, was the dramatic increase in the burden of the property tax, particularly on California homeowners." *Id.* at n.9 (quoting EHRMAN & FLAVIN, *supra* note 6, at 28).

138. 22 Cal. 3d at 232, 583 P.2d at 1291, 149 Cal. Rptr. at 249. ("[E]ach of the four basic elements of Article XIII A was designed to interlock with the others to assure an effective tax relief program.").

139. CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 58 (June 1978).

the contention that the voters intended "special districts" to refer to something less than all districts, and that "special taxes" should not be interpreted to mean all taxes.<sup>140</sup> Nor does the term "special districts" have a fixed meaning.<sup>141</sup> Initially, it is possible to argue that the voter who confronted the phrase "cities, counties and special districts" understood the words to mean any local government body and that section 4 was actually intended to apply to any local taxing agency by whatever name it may be designated. This view is subject, however, to the counter argument that the section specifically identified three entities, and that the voters, therefore, must have intended separate meanings.

Nor does the structure of the amendment as a whole clarify the meaning of "special" in "special districts." While section 1(a) refers only to "districts," which tends to suggest that a "special district" must be regarded as a different type of entity, subsequent legislation clarified that "districts" in section 1 meant cities, counties and special districts, the same wording as in section 4. However, this still left "special district" undefined.

The term "special taxes" also lacks an independent meaning.<sup>142</sup> Rather, as used in state and local statutes, the phrase acquires meaning from the context of the statute.<sup>143</sup> The structure of Proposition 13 suggests that the term was not intended to refer to all taxes. Section 3

---

140. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1981) ("Special—1: distinguished by some unusual quality; . . . 4a: supplemental to the regular, extra; . . . 6: containing particulars."). The court in *Amador* cautioned that the words of an initiative should be given a common sense interpretation rather than a narrow or technical meaning. See *supra* note 128.

141. See Hamilton, *Districts—What are They*, CAL. ST. B.J. 119, 120 (1968). Apart from the idea of a defined area, "district" usually refers to one of the following concepts:

1. Administrative areas established for the convenience of the government. . . .
2. Tax or special assessment areas established to bear the burden of an extraordinary tax or special assessment levied for local purposes. . . .
3. Areas under the jurisdiction of a public corporation exercising corporate powers within such areas for local purposes. . . .

*Id.*

142. See CAL. SENATE COMM. REV. & TAX., PROPOSITION 13: STATE AND LOCAL FISCAL OUTLOOK 208 (Nov. 14, 1978) ("special taxes" has no particular meaning in the context of Proposition 13).

143. 31 Cal. 3d at 216, 643 P.2d at 952, 182 Cal. Rptr. at 335. Cf. *City of Glendale v. Trondsen*, 48 Cal. 2d 43, 308 P.2d 1 (1957). The court interpreted a provision in the Glendale City Charter providing that the total tax rate not exceed 1% of assessed valuation, unless a special tax were authorized by two-thirds vote. The court warned that the words of the provision must be construed within the context of the city charter. *Id.* at 99, 308 P.2d at 4. The court concluded that the rubbish collection charge was not a special tax because it was not a tax on property. Consequently, the charge did not require a two-thirds vote.

demands a two-thirds vote approval in the legislature for any changes in *state* taxes. Thus, the structure of Proposition 13 itself suggests that had section 4 been meant to cover all taxes, the modifier "all" or at least "local" would have been chosen rather than "special."

*b. contemporaneous legislation*

The *Amador* court suggested that some of the ambiguities of Proposition 13 could be resolved by the legislature.<sup>144</sup> However, the statutes passed implementing Proposition 13 contain definitions of "special districts" which would both include and exclude the LACTC. The *Richmond* plurality and dissent each cited legislation favorable to its own position.<sup>145</sup> The usefulness of such statutes, as aids to interpretation, is further diminished by the fact that each of them was specifically tailored to individual problems raised by the passage of Proposition 13. No one piece of legislation was meant to serve as an omnibus interpretation of the amendment's language.

The dissent found Government Code section 50077 to be controlling.<sup>146</sup> That statute broadly defines the term "special district" as "an agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."<sup>147</sup> While the LACTC appears to fit within the boundaries of this definition, the purpose of the legislation codified as section 50077 was to give local entities authority to levy taxes which they had not previously enjoyed.<sup>148</sup> Proposition 13 had severely hampered the revenue raising capability of entities whose taxing authority was limited either substantially or entirely to property taxes. By enacting section 50077, the legislature simply intended to provide these entities with the authority to levy another type of tax. The plurality's point

---

144. 22 Cal. 3d at 245, 583 P.2d at 1301, 149 Cal. Rptr. at 258. *See supra* note 132. Subsequent legislation, however, has not always been helpful. For instance, in the interpretation of "indebtedness," an ambiguous phrase in section 1, subsequent legislation did not resolve the ambiguity. "Nobody really knew at the time what it meant," said David Doerr, consultant to the Assembly Revenue and Taxation Committee . . . "We just wrote the [legislation] using the term "indebtedness" as it was used in Proposition 13." Luther, *Confusion on Proposition 13 Tax Clouds L.A. Tax Question*, L.A. Times, May 10, 1983, § II, at 3, col. 1.

145. *See supra* notes 86-88, 111-12 and accompanying text.

146. 31 Cal. 3d at 213-14, 643 P.2d at 951, 182 Cal. Rptr. at 334 (Richardson, J., dissenting).

147. CAL. GOV'T CODE § 50077 (West 1980).

148. CAL. GOV'T CODE § 50075 (West 1980) ("It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution.").

that the LACTC already had the authority to levy a sales tax and consequently did not need section 50077 to levy a tax, although not conclusive, suggests that the LACTC does not necessarily fall within the statute's broad definition of "special district."<sup>149</sup>

The plurality cited Government Code section 16271(d).<sup>150</sup> Section 16271 defines "special district" to *exclude* "any agency which is not authorized to levy a property tax rate."<sup>151</sup> This definition would exclude the LACTC, which never had the authority to levy a property tax. However, to understand the relevancy of section 16271, it is again necessary to examine the purpose of the legislation. After the passage of Proposition 13, the legislature allocated "bailout funds" from the state budget surplus to those entities which lost property tax revenues due to Proposition 13.<sup>152</sup> The immediate concern of the legislature was to maintain some degree of local revenue equilibrium while the localities adjusted to the effects of Proposition 13.<sup>153</sup> The LACTC had not lost property tax revenue and the legislature did not intend bailout funds to benefit those entities which had lost nothing. Thus, this statute does not support the conclusion that the LACTC was not a "special district" for purposes of section 4.

*c. the voter's pamphlet*

The Voter's Pamphlet, sent to all registered voters before an election, contains a title and brief summary of each proposition on the ballot prepared by the Attorney General, an interpretation and prediction of the proposal's effects prepared by the legislative analyst, and arguments by both the proponents and the opponents. Therefore, in theory at least, the voter sees and evaluates more than just the words of the initiative when deciding how to vote. The information contained in the

---

149. 31 Cal. 3d at 207, 643 P.2d at 947, 182 Cal. Rptr. at 330.

150. CAL. GOV'T CODE § 16271(d) (West 1980). The dissent did not deal with this section.

151. *Id.* Section 16271(d) provides in pertinent part: "'Special district' does not include any agency which is not authorized to levy a property tax rate, except the Bay Area Pollution Control District."

152. "The amount of 'bailout' to be provided in 1978-79 was based on estimates of the property tax *loss* experienced by each agency. . . . The Legislature's purpose [in S.B. 154] was to ensure that local governments would be reimbursed only for tax revenues *lost* after Proposition 13." 1 CAL. ASSEMBLY COMM. REV. & TAX., PROPOSITION 13 TAX RATE ISSUES 40-41 (1980) (emphasis in original).

153. "This bill [S.B. 154] has as its purpose the partial relief of local governments from the temporary difficulties brought about by the approval of Proposition 13 at the June 6, 1978, election." 1978 Cal. Stat. Summary Digest 70.



Voter's Pamphlet could appropriately be considered what "everybody knew" about Proposition 13.

All three *Richmond* opinions used the Voter's Pamphlet in an effort to discern the intent of the voters in section 4. All three opinions focused on the word "replace" in the legislative analyst's statement that "the initiative would restrict the ability of local governments to impose new taxes in order to replace the property tax revenue losses."<sup>154</sup> The opinions took divergent views, however, on what it means to *replace* property tax revenue.

The concurrence suggested that, using "ordinary principles" of constitutional interpretation, the term "special districts," as the term is used in section 4, refers only to those districts which have the authority to impose property taxes, because only those districts can have property tax losses to replace.<sup>155</sup> The plurality, citing the same sentence, concluded that "[s]ince only those 'special districts' which levied property taxes could 'replace' the 'loss' of such taxes, these statements imply that the 'special districts' referred to are those which are authorized to levy a property tax."<sup>156</sup>

Five members of the court, the plurality and the two justices who joined in the concurrence, structured their arguments in a similar manner. They argued that because those who voted for Proposition 13 were concerned about property taxes, section 4 can be interpreted as designed to prevent local entities from increasing "other" taxes, of any type, to replace lost property taxes.<sup>157</sup> A local entity *without* authority to levy property taxes has lost nothing because of Proposition 13 and consequently has nothing to replace. Therefore, for purposes of section 4, a "special district" is a district with the authority to raise property taxes. Undeniably, this definition reached the majority of special districts within California at the time Proposition 13 was passed. But of greater importance for the *Richmond* case, it did not reach the LACTC because the LACTC *only* had the authority to levy a sales tax, not a property tax.

In criticizing the plurality's conclusion, the dissent suggested that the error was due to the plurality's use of a rule of strict construction.<sup>158</sup>

---

154. CAL. SECRETARY OF STATE, VOTER'S PAMPHLET 60 (JUNE 1978) "Replacement of property taxes" appears throughout the legislative analyst's opinion.

155. 31 Cal. 3d at 208-09, 643 P.2d at 948, 182 Cal. Rptr. at 331 (Kaus, J., concurring).

156. *Id.* at 206, 643 P.2d at 946, 182 Cal. Rptr. at 329.

157. *Id.* at 206, 643 P.2d at 946, 182 Cal. Rptr. at 329; *id.* at 208-09, 643 P.2d at 948, 182 Cal. Rptr. at 331 (Kaus, J., concurring).

158. *Id.* at 210, 643 P.2d at 949, 182 Cal. Rptr. at 332 (Richardson, J., dissenting) ("In my view, neither the adoption of a new rule of strict construction within this context, nor its

The dissent ignored the fact, however, that the concurrence also reached the conclusion that the LACTC was not a special district, without using a rule of strict construction.<sup>159</sup> The rule of construction, therefore, was not the determinative factor accounting for the difference between the conclusion reached by the plurality and that reached by the dissent.

One key to the difference lies in the *Amador* opinion's failure to define the purpose of Proposition 13 with sufficient clarity. While the opinions of the plurality and the concurrence in *Richmond* rested on the conclusion that the voters' intent was "effective real property tax relief," the dissent referred to both purposes cited in *Amador*: effective real property tax relief<sup>160</sup> and tax relief.<sup>161</sup> As a result, it is unclear whether the dissent's conclusion that the LACTC's sales tax was a "special tax" derives from a determination that the voters intended to obtain effective property tax relief or simply tax relief.

Regardless, however, of which of the two possible purposes relied upon, the dissent broadly concluded that the LACTC is a special district. If Justice Richardson viewed the purpose of Proposition 13 as total tax relief, he failed to discuss the stare decisis effect of the other purpose announced in *Amador*: that of effective real property tax relief. Furthermore, the dissent did not engage in the two-step process of *first* identifying the voters' intent and then liberally construing the initiative to give effect to the intent.<sup>162</sup> The dissent instead followed a liberal rule of construction to identify the purpose of the voters as well as to construe the language of the initiative. In short, the dissent identified the purpose of the voters as broadly as possible—tax relief in general—and then proceeded to apply a liberal interpretation to give tax relief the fullest possible meaning.<sup>163</sup> Although the dissent's argument may have

---

application which obscures LACTC's identity as a 'special district' within the constitutional meaning, is legally sound.").

159. *Id.* at 209, 643 P.2d at 946, 182 Cal. Rptr. at 331 (Kaus, J., concurring) ("[I]t appears sensible under ordinary principles of constitutional interpretation to construe section 4's reference to 'special districts' to apply only to those special districts which had the authority to impose property taxes, for it is only those districts which could suffer *property tax losses* for which the new special tax revenues would serve as a replacement." (emphasis in original)).

160. *Id.* at 211, 643 P.2d at 949, 182 Cal. Rptr. at 332 (Richardson, J., dissenting) ("We concluded that these four elements formed 'an interlocking "package" deemed necessary . . . to assure *effective real property tax relief* . . . ' " (emphasis in original)).

161. *Id.* at 215, 643 P.2d at 952, 182 Cal. Rptr. at 335 (Richardson, J., dissenting) ("[I]t is apparent that the broadest possible definition of 'special taxes' would best serve that objective of *tax relief*." (emphasis added)).

162. See *supra* notes 127-29 and accompanying text.

163. 31 Cal. 3d at 215, 643 P.2d at 952, 182 Cal. Rptr. at 335 (Richardson, J., dissenting) ("[I]t is apparent that the broadest possible definition of 'special taxes' would best serve that

been couched in terms of "effective real property tax relief,"<sup>164</sup> the dissent actually interpreted section 4 consistent with the broader purpose of tax relief.

Alternatively, the dissent's different result in *Richmond* may be consistent with the Proposition 13 purpose of effective real property tax relief. Justice Richardson's conclusion that the LACTC tax was intended as a replacement for property taxes was based on the theory that the term "replacement" refers, not to the source of government funds, but to their function.<sup>165</sup> Because public transportation is a proper function of city and county governments, he explained, such services *could* be funded by a real property tax.<sup>166</sup> Therefore, transportation services were affected by Proposition 13 in that the reduction in property tax revenues reduced the city or county budgetary ability to fund transportation. By this reasoning, the LACTC tax was necessarily a replacement for the lost property taxes.

The connection discerned by Justice Richardson between the LACTC sales tax and city or county property tax revenues is that both may be used for transportation purposes. The crucial inquiry of this "function" theory is whether the purpose in question is a function of local government which could be funded by property taxes. If so, Justice Richardson would reason, the tax to be levied to support that function should be considered a replacement for the property tax.

This analysis produces anomalous results. Although this concept of replacement has appeal when applied to communities that levy a property tax, it would in theory apply equally to a local government which did not levy a property tax but which provided the same serv-

---

objective of tax relief."); *id.* at 216, 643 P.2d at 953, 182 Cal. Rptr. at 336 ("the broader purpose of 'effective' tax relief").

164. *Id.* at 212, 643 P.2d at 950, 182 Cal. Rptr. at 333 (Richardson, J., dissenting) ("[W]e clearly identified the *objective* of the framers of Article XIII A as seeking 'to assure effective real property tax relief.'" (emphasis in original)). *But cf.* 31 Cal. 3d at 215, 643 P.2d at 952, 182 Cal. Rptr. at 335 (Richardson, J., dissenting) ("[I]t is apparent that the broadest possible definition of 'special taxes' would best serve that objective of *tax relief*." (emphasis added)).

165. *Id.* at 219, 643 P.2d at 954, 182 Cal. Rptr. at 337 (Richardson, J., dissenting) ("Focusing . . . upon the function of government which it proposes to accomplish from that tax . . .").

166. *Id.* at 215, 643 P.2d at 952, 182 Cal. Rptr. at 335 (Richardson, J., dissenting).

The purpose of the tax in question is to generate within the geographical boundaries of Los Angeles County revenues for the improvement of public transit within that locale. Such a tax is a substitute for those revenues which could otherwise have been generated by real property taxes imposed by Los Angeles County itself *but for* the restrictions of Article XIII A.

*Id.*

ices.<sup>167</sup> The result would be that section 4 would apply to almost all taxes, since most government functions could conceivably be funded by the property tax.

Although Justice Richardson's interpretation of section 4 is indeed liberal, it poses the question whether such a liberal interpretation actually serves the identified purpose of effective *real property tax relief*. One conclusion is that Justice Richardson believes that the only way to achieve effective property tax relief is by means of *total* tax relief. Therefore, it is immaterial whether Justice Richardson believed the purpose of Proposition 13 to be total tax relief or effective property tax relief. Whatever the reasoning employed to reach his conclusion, that conclusion was the same: section 4 applies to the LACTC sales tax.

### B. *Appropriateness of the Rule of Construction*

If the plurality had limited its discussion to an interpretation of section 4 without insisting on the use of a rule of strict construction, *Richmond* might well have been a five to one majority opinion concerned with the concept of "replacement." Replacement of lost property tax, however, was not the test for section 4 which emerged from *Richmond*.<sup>168</sup> The rule of strict construction established by the plural-

---

167. Justice Richardson was concerned that "special districts" not empowered to levy property taxes would be established to perform functions which the cities and counties had funded before Proposition 13. *Id.* But it should be noted that the LACTC was in existence at the time Proposition 13 was passed. It was not set up suddenly to replace a city supported transportation system. LACTC was not part of the property tax bill which, arguably, was the cause of Proposition 13's passage.

168. "Replacement of lost property tax," however, may not be an effective test by itself in that it is an elusive phrase, much as the phrase "effective real property tax relief." The test would demand a case-by-case inquiry whether a particular tax in a particular locality replaced lost property taxes. In *Richmond*, the inquiry would not have been difficult because the LACTC had never levied a property tax; therefore, it had no lost property tax revenues to replace. At the other end of the spectrum, the determination would also be relatively simple. A special district, such as a rural fire district, which levied only a property tax identified on the tax bill as a tax for that special district would clearly be replacing lost property tax revenues if it levied another type of tax. But in between these extremes fall the local governments which levy a variety of taxes, including property tax. If the property taxes were levied for a specific purpose (for example, the City of Redondo Beach levied property taxes for the city pension fund, the recreation program and the libraries; the taxes were so identified on the property tax bill), it would again be easy to conclude that taxes levied to support these functions after Proposition 13 would be replacing lost property tax funds. In the more typical case, however, property taxes are levied in the entity's name alone and go into the local entity's general fund along with other tax revenues, the fund being disbursed to pay for local activities. See, e.g., CITY OF MANHATTAN BEACH, ANNUAL BUDGET 1977-1978, 6-7, 54. Under these circumstances, the concept of replacement becomes more difficult. The reasoning of *Richmond* may force the circular conclusion that any tax which goes into the

ity is the decisive factor, and carries overriding significance for the future.

Both the plurality<sup>169</sup> and the dissent<sup>170</sup> cited the *Amador* rules of construction which suggest that an initiative should be liberally construed.<sup>171</sup> Those rules are firmly grounded in the decisions of the California courts.<sup>172</sup> The argument in favor of the traditional rule of liberal construction and against the shift to stricter construction adopted in *Richmond* is further supported by a general consideration of the history and purpose of direct legislation<sup>173</sup> in California as well as the specific experience of Proposition 13.

---

entity's general fund after Proposition 13 is replacing lost property taxes because property tax revenues go into the general fund.

169. 31 Cal. 3d at 202-03, 643 P.2d at 944, 182 Cal. Rptr. at 327.

170. *Id.* at 210-11, 643 P.2d at 949, 182 Cal. Rptr. at 332 (Richardson, J., dissenting).

171. Neither Justice Mosk nor Justice Richardson mentioned the rule of construction used in *Board of Supervisors v. Loneragan*, 27 Cal. 3d 855, 616 P.2d 802, 167 Cal. Rptr. 820 (1980), another Proposition 13 interpretation case. In *Loneragan*, Justice Mosk harmonized two constitutional provisions to allow both vitality. *Id.* at 866, 616 P.2d at 808-09, 167 Cal. Rptr. at 826-27 (citing *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1973) for the proposition that a constitutional amendment is to be construed in harmony with the existing framework of which it forms a part, so as to avoid a conflict).

Although harmonization in *Richmond* would require a finding of some constitutional basis for local control over local taxes unfettered by state voters, *see infra* notes 193-99 and accompanying text, the result would perhaps be more tailored to the voters intent, which was effective property tax relief. The rule of liberal construction as applied by Justice Richardson results in total tax relief, in that section 4 would apply to all taxes. *See supra* text after note 167. The rule of strict construction, however, at least as applied in *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (*see infra* text accompanying notes 205-08), has the potential of making Proposition 13 an ineffective property tax limitation initiative.

172. 22 Cal. 3d at 219, 244-45, 583 P.2d at 1283-84, 1299-1300, 147 Cal. Rptr. at 241-42, 257-58. The *Amador* court used two separate lines of cases as precedent for a rule of liberal construction. The first line of cases deals with the power of the initiative and concluded that the subject matter of an initiative may be virtually unlimited. *Id.* at 219-20, 583 P.2d at 1283-84, 147 Cal. Rptr. at 241-42 (citing *Associated Home Builders v. City of Livermore*, 18 Cal. 3d 582, 598, 557 P.2d 473, 482, 135 Cal. Rptr. 41, 50 (1976); *San Diego Bldg. Contractors Ass'n v. City Council*, 13 Cal. 3d 205, 210 n.3, 529 P.2d 570, 572-73 n.3, 118 Cal. Rptr. 146, 148-49 n.3 (1974)). The second line of cases deals with constitutional interpretation in general but may be used to support a judicial procedure which first identifies the intent of the voters and then liberally construes the words of the initiative so as to give maximum effect to the voters' intent. 22 Cal. 3d at 245, 583 P.2d at 1299, 147 Cal. Rptr. at 257 (citing *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 259, 502 P.2d 1049, 1056-57, 104 Cal. Rptr. 761, 769 (1972); *In re Kernan*, 242 Cal. App. 2d 488, 491, 51 Cal. Rptr. 515, 517 (1966)). *See also supra* note 127.

173. Direct legislation in California may be by initiative, referendum or recall. CAL. CONST. art. II, §§ 8-19.

### 1. The initiative process

The initiative process is spoken of in almost reverential terms, having been described as the voice of the people and as democracy in action.<sup>174</sup> It has been characterized as a "battering ram" that enables voters to enact legislation when the legislature cannot or will not do so.<sup>175</sup> Yet the initiative process has not escaped criticism.

One criticism of the process is that it lacks a proposal review mechanism comparable to the process of debate, alteration and consensus which occurs when the legislature considers proposals.<sup>176</sup> The voter contemplating an initiative, unlike the legislator, is limited to voting "yes" or "no." There is no opportunity to shape, alter or affect the content of an initiative.

In the case of Proposition 13, a proposal review mechanism might have resulted in clarification of the language of the initiative. Beyond this, however, the criticism does not seem to apply to Proposition 13. The voters considering the June 1978 ballot had a choice between two property tax proposals—Proposition 13 and Proposition 8. Proposition 8,<sup>177</sup> proposed by the legislature, had the advantage of legislative debate and should, according to the theory underlying this criticism, have represented a consensus. In the vote contest, however, it received fewer votes than Proposition 13.<sup>178</sup> Proposition 13 accomplished what the legislature had failed to accomplish: a successful property tax reform measure.

---

174. *McFadden v. Jordan*, 32 Cal. 2d 330, 332, 196 P.2d 787, 788 (1948) ("The right of the initiative is precious to the people and is one which the courts are zealous to preserve to the fullest tenable measure of spirit as well as letter.").

175. V. KEY, *INITIATIVE AND REFERENDUM IN CALIFORNIA* 458 (1939). In the 1970s there was strong public sentiment favoring property tax reform. Such reform, however, was not forthcoming from the legislature. The last major legislative revision, Assembly Bill 80—A Bill of Rights for Property Owners, was passed in 1966. See *supra* note 44 and accompanying text. Leo McCarthy, Speaker of the Assembly, suggested in a debate with Howard Jarvis, that it was the "threat of Proposition 13" that goaded the Legislature into proposing a property tax reform bill which appeared as Proposition 8 on the 1978 ballot along with Proposition 13. This effect was also noted in a newspaper story. As a storm rumbled overhead during a debate one Senator asked, "'Is that thunder?' 'No, it's Jarvis,' another responded." L.A. Times, Mar. 3, 1978, § I, at 19, col. 2.

176. Comment, *The California Initiative Process: A Suggestion for Reform*, 48 S. CAL. L. REV. 922, 930-34 (1975). See also *Initiative Makes a Big Comeback as Groups Seek to Bypass Legislature*, 3 CALIF. J. 229, 230 (1972).

177. CAL. SECRETARY OF STATE, *VOTER'S PAMPHLET* 36 (June 1978). Proposition 8 would have permitted the Legislature to establish a lower property tax rate for owner occupied homes.

178. CAL. SECRETARY OF STATE, *STATEMENT OF VOTE* 39 (June 1978). Proposition 8 received 2,972,424 yes votes, 47% of the total vote cast on that proposition as opposed to Proposition 13 which received 4,280,689 yes votes, 64.8% of the total vote. *Id.*

Another criticism of the initiative process is that voters often do not have, or will not take, the time to investigate each proposition.<sup>179</sup> This criticism seems equally inapplicable to Proposition 13, which was the subject of such widespread publicity and spirited public discussion that the *Amador* court took judicial notice of the public's well-informed status.<sup>180</sup> Consequently, lack of information upon which to base an informed vote is not a valid ground for imposing a rule of strict construction in the context of Proposition 13.

A final criticism which has been leveled at the initiative process is that financing frequently determines the outcome of the election.<sup>181</sup> However, of the sixteen initiatives that appeared on the ballot between 1972 and 1976, the better financed side prevailed only eight times.<sup>182</sup> Furthermore, this criticism seems inapplicable to the campaign for Proposition 13, which was well financed on both sides.<sup>183</sup> Money simply was not an issue. Moreover, Proposition 13 stands out as a "grass-roots" campaign. The Proposition 13 petition drive, which relied primarily on volunteers to gather signatures,<sup>184</sup> was able to generate two and one-half times the signatures needed to qualify the initiative for the ballot. It would be error to urge a rule of strict construction of Proposition 13 and its language on the theory that an undue infusion of money had swayed the election.

The criticisms, then, which might be used to justify a strict interpretation of an initiative do not apply to the specific experience of Proposition 13. Voters turned out in record numbers for a primary election, an election which traditionally has a low voter turnout. Given the extent of the public debate and information, people were reasonably well informed. The electorate made a choice between two competing proposals and Proposition 13 won.

---

179. See Comment, *supra* note 176, at 934-39.

180. 22 Cal. 3d at 231, 583 P.2d at 1291, 149 Cal. Rptr. at 249 ("We may take judicial notice of the fact that the advance publicity and public discussion of article XIII A and its predicted effects were massive.").

181. B. HYINK, *POLITICS AND GOVERNMENT IN CALIFORNIA* 130 (1975).

The most active organizations sponsoring or opposing ballot measures in recent years have been well financed groups . . . It would appear that the original purpose of direct democracy, namely to eliminate control of government by powerful economic interests has been frustrated.

*Id.*

182. Lee, *750 Propositions: The Initiative in Perspective*, 2 CALIFORNIA DATA BRIEF 3 (Institute of Governmental Studies, UC Berkeley, Apr. 1978).

183. By April 25, 1978, the proponents of Proposition 13 had raised \$449,526; the opponents \$887,153. By May 25, 1978, the proponents had raised \$1,138,388; the opponents \$1,028,181. L.A. Times, May 31, 1978, § I, at 25, col. 1.

184. See *supra* note 59.

## 2. *The two-thirds vote requirement*

The plurality based its rule of strict construction in part on the inherently undemocratic nature of a two-thirds vote. Although a two-thirds vote requirement is indeed burdensome,<sup>185</sup> this does not necessarily constitute sufficient justification for abandonment of the traditionally applied rule of liberal construction. As onerous as the requirement may be, it is neither unconstitutional nor a novelty in the California Constitution.<sup>186</sup>

In *Westbrook v. Mihaly*,<sup>187</sup> the California Supreme Court considered a constitutional challenge to the requirement imposed by article XVI, section 18 of the California Constitution that local indebtedness be approved by two-thirds of the local voters. Two bond issues, one for the San Francisco parks and recreation system and the other for school facilities in the Hunters Point area of San Francisco, were approved by a majority of the voters but failed to attain a two-thirds majority. Citing federal equal protection grounds, the California Supreme Court held that the requirement of more than a simple majority was unconstitutional.<sup>188</sup> The United States Supreme Court, however, in *Gordon v. Lance*,<sup>189</sup> refused to extend the equal protection argument to a two-thirds vote requirement, absent a showing that an identifiable class suffered discrimination.<sup>190</sup>

Despite the stamp of constitutionality placed on the two-thirds vote requirement by the United States Supreme Court, a two-thirds vote requirement may yet, based on the reasoning in *Richmond*, become a trigger for strict construction of future initiatives in California.

---

185. See Scott & Hamilton, *Extraordinary Majority Voting Requirements v. Equal Representation: A Constitutional Challenge*, 10 PUBLIC AFFAIRS REPORT 3 (Institute of Governmental Studies, UC Berkeley, Aug. 1969). In a study of California school bond elections in the period from 1966 to 1968, at least 80% of the bond issues received a 50% vote but only 40% received the two-thirds vote required to pass. *Id.* at 3-4. A similar result was found in Los Angeles and San Francisco city and county bond elections. *Id.* at 4. See also *supra* notes 92-93.

186. See, e.g., CAL. CONST. art. XVI, § 18 (two-thirds vote required to pass local bond issues).

187. 2 Cal. 3d 765, 471 P.2d 487, 87 Cal. Rptr. 839 (1979), *vacated*, 403 U.S. 915, *cert. denied*, 403 U.S. 922 (1971).

188. "We are aware of no principle which required the California Constitution to provide that certain issues of local finance were to be entrusted to the voters. . . . Since it has done so, however, the voting procedures established must comply with equal protection." *Id.* at 784, 471 P.2d at 500, 87 Cal. Rptr. at 852 (citation omitted).

189. 403 U.S. 1 (1971).

190. "We conclude that so long as such provisions do not discriminate against or authorize discrimination against any identifiable class they do not violate the Equal Protection Clause." 403 U.S. at 7.



### 3. Local control

The plurality's justification for a rule of strict construction also took into consideration the subject to which a two-thirds vote is to be applied. In *Richmond*, Justice Mosk identified that subject as a local tax—an issue of local effect and local concern.<sup>191</sup> If applied to such a local tax, section 4's two-thirds vote requirement, imposed by state voters, would interfere with strongly held principles of local control. The dissent offered the counter argument that a two-thirds vote would preserve local control.<sup>192</sup>

The state constitution embodies the doctrine of local control. In the allocation of power among the levels of government within the state, some concerns belong to local governments.<sup>193</sup> While the dividing line between state and local affairs is somewhat fluid,<sup>194</sup> the *Rich-*

191. 31 Cal. 3d at 204, 643 P.2d at 944, 182 Cal. Rptr. at 327.

[By the terms of Proposition 13] a majority—but less than two-thirds—of the voters statewide have determined in a local election involving a matter of primarily local interest, a minority of voters can preclude the majority from imposing a “special tax” confined to the taxpayers of the local entity to finance local projects or services.

*Id.*

192. “As we stressed in *Amador*, the ‘super-majority’ two-thirds vote requirement for ‘special taxes’ is defensible largely as the *preserver* of home rule principles.” *Id.* at 217, 643 P.2d at 953, 182 Cal. Rptr. at 335 (Richardson, J., dissenting) (emphasis in original) (citing *Amador*, 22 Cal. 3d at 226, 583 P.2d at 1287, 149 Cal. Rptr. at 245: “Although the interpretation of [sections 1, 2 and 4] is not presently before us, it seems evident that section 4 assists in preserving home rule principles by leaving to *local* voters the decision whether or not to authorize ‘special’ taxes to support *local* programs.” (emphasis in original)). Assuming for the sake of argument that this is the import of the *Amador* passage cited by Justice Richardson, it is difficult to see how a local decision made by local voters will be anymore protected from outsiders by requiring a two-thirds vote rather than a simple majority vote. Closer analysis would suggest that a two-thirds vote imposed by outsiders is an intrusion into the local decision on what the requisite voting majority for local issues should be.

193. CAL. CONST. art. XI, § 5(a) provides in pertinent part:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.

CAL. CONST. art. XI, § 7 provides: “A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.”

The 1896 amendments which inserted what is now article XI, sections 5(a) and 7 into the constitution, were enacted upon the principle “that the municipality itself knew better what it wanted and needed than did the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.” *Ex parte Braun*, 141 Cal. 204, 209, 74 P. 780, 782 (1903) (quoting *Fragley v. Phelan*, 126 Cal. 383, 387, 58 P. 923, 923 (1899)).

194. See *Bishop v. City of San Jose*, 1 Cal. 3d 56, 63, 460 P.2d 137, 141, 81 Cal. Rptr. 465, 469 (1969) (“[T]he ‘constitutional concept of municipal affairs . . . changes with the changing conditions upon which it is to operate. What may at one time have been a matter of

*mond* plurality suggested that a sales tax for local transportation was a matter of local concern.<sup>195</sup> California decisions support this proposition.<sup>196</sup>

The power to raise revenue is vital to local government.<sup>197</sup> In a line of California cases concerning state statutes which appeared to conflict with the authority of local governments to raise taxes for local purposes, the statutes have been strictly construed to limit state-imposed restraints on local taxing power.<sup>198</sup> These cases offer support for a rule of strict construction where state voters impede the ability of local entities to raise local taxes.

Yet, both the constitutional local control provisions and the cases construing them are directed at the legislature, not the voters of the state. It is undeniable that through the broad, almost unlimited reach of the initiative power, state voters have the legal right to limit the revenue raising power of local governments.<sup>199</sup> The plurality's local control argument, therefore, of necessity, went beyond the issue of constitutionality to inquire whether to effect the voters' intent of effective real property tax relief, all local taxes must be limited by the two-thirds vote requirement.<sup>200</sup>

In conducting this inquiry, the plurality questioned the *fairness* of section 4's two-thirds requirement in light of the fact that less than a two-thirds majority of the state's voters had voted to pass Proposition

---

local concern may at a later time become a matter of state concern controlled by the general laws of the state.'" (citation omitted)); David, *Our California Constitutions, Retrospections in This Bicentennial Year*, 3 HASTINGS CONST. L.Q. 697, 731-32 (1976) ("What constitutes a 'municipal affair' at any given time or in any given circumstance is a judicial question." (footnote omitted)).

195. 31 Cal. 3d at 204, 643 P.2d at 945, 182 Cal. Rptr. at 328.

196. See *Weekes v. City of Oakland*, 21 Cal. 3d 386, 392, 579 P.2d 449, 452, 146 Cal. Rptr. 558, 561 (1978) ("[T]he power to tax for local purposes clearly is one of the privileges accorded chartered cities by the home rule provision of the California Constitution."); *Ex parte Braun*, 141 Cal. at 211-12, 74 P. at 783.

197. *Ex parte Braun*, 141 Cal. at 209, 74 P. at 782 ("A municipality without the power of taxation would be a body without life, incapable of acting, and serving no useful purpose." (quoting *United States v. New Orleans*, 98 U.S. 381, 393 (1878))).

198. See *Weekes v. City of Oakland*, 21 Cal. 3d 386, 579 P.2d 449, 146 Cal. Rptr. 558 (1978) (license fee not tax on income as prohibited by CAL. REV. & TAX. CODE § 17041.5); *Rivera v. City of Fresno*, 6 Cal. 3d 132, 490 P.2d 793, 98 Cal. Rptr. 281 (1971) (utility users tax substantially different from sales and use tax of CAL. REV. & TAX. CODE § 7203.5). See also David, *California Cities and the Constitution of 1879*, 7 HASTINGS CONST. L.Q. 643, 688-89 (1980). But cf. *Century Plaza Hotel Corp. v. City of Los Angeles*, 7 Cal. App. 3d 616, 87 Cal. Rptr. 166 (1970) (taxation and regulation of alcohol a state concern).

199. See *San Diego Bldg. Contractors Ass'n v. City Council*, 13 Cal. 3d 205, 210 n.3, 529 P.2d 570, 572 n.3, 118 Cal. Rptr. 146, 148 n.3 (1974) (power of initiative construed to be limited only by constitutional provisions).

200. 31 Cal. 3d at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

13. Justice Mosk raised the spectre of a local entity unable to pass a local tax to pay for a purely local purpose because of section 4's restriction.<sup>201</sup> A rule of strict construction is necessary, he reasoned, in part to prevent state voters from running local governments.<sup>202</sup> Absent such a rule, local voters would have no remedy but to launch their own statewide initiative to amend Proposition 13, an almost unmanageable option by any standards, and even more impractical if the local voters were seeking the change for some local issue with no statewide appeal.

Section 4 need not be construed to apply to all taxes raised by all local entities in order to give effect to the intent of the voters. It applies, as both the plurality and the concurrence argued, only to those taxes designed to *replace* lost property tax revenues.<sup>203</sup> The plurality decided that LACTC's sales tax was not designed to replace lost property taxes; therefore, the tax simply did not fit within the two-thirds vote requirement of section 4. Consequently, there was no reason to construe section 4 either liberally or strictly. The plurality's rule of strict construction, therefore, was not necessary to the resolution of *Richmond*.

#### 4. The effect of a rule of strict construction

The plurality's rule of strict construction moots any discussion of the voters' intent; more to the point, it totally ignores the "replacement of lost property taxes" test of section 4 which seemed to have been developed in *Richmond*. Indeed, the ultimate effect of the rule of strict construction which emerged in *Richmond* may be to deprive section 4

---

201. *Id.* at 204, 643 P.2d at 945, 182 Cal. Rptr. at 328.

202. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328. The plurality's discussion clearly goes beyond the facts of *Richmond*. Justice Mosk was concerned with the voters of an area where the majority of the voters had voted against Proposition 13. *Cf.* *City and County of San Francisco v. Farrell*, *infra* notes 205-08 and accompanying text. He sensed something inherently unfair in imposing upon them the two-thirds vote requirement of section 4 when they are voting on issues of only local concern. *See* 31 Cal. 3d at 203, 643 P.2d at 945, 182 Cal. Rptr. at 328. While such an argument may be valid, it is not applicable to the facts of *Richmond*.

Although Proposition 13 passed with 64% approval statewide, it received 67% of the vote in Los Angeles County. CAL. SECRETARY OF STATE, STATEMENT OF VOTE 39 (June 1978) (1,367,907 votes for, 662,817 votes against in Los Angeles County). More than two-thirds of the voters were seemingly willing to impose upon themselves, as well as on the rest of the state, the requirement for a two-thirds vote in local special tax elections. It certainly was not unfair, then, to the voters of Los Angeles County to say that 54% approval, which the LACTC sales tax received, was not enough.

203. 31 Cal. 3d at 205-06, 643 P.2d at 946, 182 Cal. Rptr. at 329; *id.* at 209-10, 643 P.2d at 948, 182 Cal. Rptr. at 331 (Kaus. J., concurring).

of its vitality.<sup>204</sup>

This theory is given substance in *City and County of San Francisco v. Farrell*,<sup>205</sup> decided three months after *Richmond*. Only 47% of the voters of San Francisco had voted for Proposition 13; yet 55% had voted for an extension of a tax on payrolls and gross receipts. Both the payroll and gross receipts tax and the property tax were deposited into the city's general fund, which was the source of revenue for general city functions. Farrell, the city controller, refused to certify that funds were available from the tax to pay for improvements to a municipally owned hospital. He asserted that the payroll and gross receipts tax was a special tax subject to section 4's two-thirds vote requirement, and that 55% voter approval was an insufficient vote.<sup>206</sup> If the test to be applied were "any tax used to replace lost property tax revenues," as discussed in *Richmond*, the extension of the payroll tax could well have been viewed as a "special tax" and subject to the two-thirds vote requirement. The *Farrell* majority, however, using the rule of strict construction established in *Richmond*, construed the term "special taxes" narrowly. It concluded that special taxes were only those taxes levied for specific purposes.<sup>207</sup> Because the *Farrell* tax was intended for the general fund, not for a special purpose, it was not a special tax and therefore not limited by section 4.<sup>208</sup>

The *Farrell* majority ignored the statements of section 4's purpose articulated in both *Amador* and *Richmond*: that it was part of the Proposition 13 package to insure effective real property tax relief. Under the *Farrell* holding, a tax raised for a specific purpose must be approved by two-thirds of the voters regardless of whether it replaces lost property taxes. By the same token, a tax levied for the general fund, which replaces lost property tax revenues, does not require a two-thirds vote, regardless of the fact that money from the general fund will be

---

204. For an example of this, see Feldman, *Community Tries Innovative Tax Strategy*, L.A. Times, Oct. 30, 1983, § II, at 1, col. 3. An initiative on the Palos Verdes Estates local ballot provided for an annual flat property tax of \$485. City officials maintained that a simple majority of the voters would be sufficient to approve the initiative because "the income from the tax would be placed into the city's general fund." *Id.* But, while some of Proposition 13's vitality may be lost due to *Richmond*, it still is arguable that the goal of effective real property tax relief has not been defeated. Voters are able to defeat property tax measures requiring a 50% vote. *Cf.* L.A. Times, Nov. 9, 1983, § II, at 4, col. 6 (Palos Verdes initiative received only 43% of the vote).

205. 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (1982).

206. *Id.* at 50-51, 648 P.2d at 936-37, 184 Cal. Rptr. at 714-15.

207. *Id.* at 57, 648 P.2d at 940, 184 Cal. Rptr. at 718.

208. *Id.*

used to support a specific activity. *Farrell* exalts the form of section 4 over its substance.

While the definition of "special districts" developed in *Richmond*—a district empowered to levy a property tax—is not inconsistent with the Proposition 13 goal of "effective real property tax relief," the rule of strict construction has the potential to undercut sharply Proposition 13's effectiveness as a property tax relief measure. As applied in *Farrell*, the rule of strict construction neutralizes the effect of section 4. The goal of effective real property tax relief may well be lost if the term "special taxes" is read so as to refer only to taxes levied for a specific purpose. Local entities may be expected to levy all taxes for the general fund, as most taxes are presently levied, to avoid the two-thirds vote requirement. The property tax relief won in sections 1 and 2 may indeed be taxed away as local entities simply substitute one tax source for another.

### C. *The Court's Role in Initiative Interpretation*

A former Hollywood starlet, in a paid political announcement, advised voters to vote against three Supreme Court Justices in the November 1982 election because, among other things, "they have taken Proposition 13 away from us."<sup>209</sup> While there may be voter dissatisfaction with the results the court has reached in interpreting Proposition 13 cases, the more interesting discussion in light of the *Richmond* decision focuses not on the *result* of the decision but on the role of the court in initiative interpretation cases. Has the court, after *Richmond*, set itself up as the "supervoter?"

The *Amador* decision opened with the statement that "[w]e do not consider or weigh the economic or social wisdom or general propriety of the initiative. Rather, our sole function is to evaluate article XIII A legally in the light of established constitutional standards."<sup>210</sup> Justice Richardson, dissenting in *Richmond*, specifically made the point for section 4: "Whether or not it is financially wise to do so, the people, through their Constitution, have a *legal* right to so limit the revenue powers of local government."<sup>211</sup>

This is hardly the first time that a discussion of the court's role has arisen. To paraphrase Justice Holmes, dissenting in *Lochner v. New*

---

209. June Allyson (Paid Political Announcement) KFAC 92.6 (Los Angeles), Oct. 27, 1982. See also *supra* note 68.

210. 22 Cal. 3d at 219, 583 P.2d at 1283, 149 Cal. Rptr. at 241.

211. 31 Cal. 3d at 210, 643 P.2d at 949, 182 Cal. Rptr. at 332 (Richardson, J., dissenting) (emphasis in original).

*York*,<sup>212</sup> the court should not strictly construe an initiative simply because the court does not like it.<sup>213</sup> The majority in *United States v. Carolene Products, Co.*<sup>214</sup> was willing to defer to the legislature. The Court has maintained this stand. In *Ferguson v. Skrupa*,<sup>215</sup> the Court stated: "We refuse to sit as a 'superlegislature to weigh the wisdom of legislation . . . .'"<sup>216</sup>

The character and purpose of the initiative process itself,<sup>217</sup> as well as previous California decisions that have established a rule of liberal construction,<sup>218</sup> suggest that once the voters' intent is discerned, the language of the initiative should be liberally interpreted to give the voters' intent the fullest effect.<sup>219</sup> The initiative process is direct legisla-

---

212. 198 U.S. 45 (1905) (Holmes, J., dissenting). The *Lochner* majority struck down New York State maximum hour legislation under the due process clause, explaining that "the freedom of master and employe[e] to contract with each other and in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution." *Id.* at 64. Commentators have argued that the result flowed from the justices' belief that the Court's role was to protect the free enterprise system consistent with the concept of laissez-faire economics. See, e.g., R. McCLOSKEY, *THE AMERICAN SUPREME COURT* 137-39 (1960).

213. 198 U.S. at 75 (Holmes, J., dissenting). Justice Holmes stated:

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of the majority to embody their opinions in law.

*Id.*

214. 304 U.S. 144, 154 (1938) (challenge to legislation prohibiting interstate shipment of "filled milk" with the Court deferring to legislative judgment: "[W]here the legislative judgment is drawn in question, [the inquiry] must be restricted to the issue whether any state of facts is known, or which could reasonably be assumed, which affords support for the [legislation].")

215. 372 U.S. 726 (1963) (sustaining a Kansas law prohibiting a "debt adjustment business" unless incident to the practice of law).

216. *Id.* at 731.

217. See *supra* notes 176-77 and accompanying text.

218. See *supra* note 174 and accompanying text.

219. Justice Richardson did not carefully go through the two-step process. His opinion uses language from *Amador* which cites two different goals of Proposition 13: effective real property tax relief and tax relief, tax relief being a much broader goal. See *supra* notes 104-05. If he chose tax relief as the goal because it was the more liberal interpretation, he applied a rule of liberal interpretation too soon. See *supra* text accompanying note 162. The essential first step determination is the voters' intent. See *supra* notes 127, 172 and accompanying text. Then the court should apply a rule of liberal construction to the initiative to give the fullest effect to that intent. *Stare decisis* does not suggest that a rule of liberal construction be used to discern voters' intent. Justice Richardson could himself be playing supervoter by making Proposition 13 broader than the voters' intent. See *supra* text accompanying notes 162-64. A similar discussion was advanced by Raoul Berger in *Government by Judiciary: the Transformation of the Fourteenth Amendment* (1977). Berger argued that the Court's role is to determine the constitutionality of law, not to make law. The power to

tion, a mechanism by which the state voters can implement legislation which the legislature cannot or will not enact. Once the court determines that the action is constitutional, a strong argument can be made that the court should no more interfere with the intent of the voters than it would interfere with the intent of the legislature. Admittedly the court had before it the predictions of Proposition 13's detractors: that it would bring local government to a grinding halt and completely eliminate all public services.<sup>220</sup> Once the plurality acknowledged, however, the constitutionality of the two-thirds vote requirement<sup>221</sup> without choosing to explore the possibility of a constitutional conflict between Proposition 13 and the local control provisions of the California Constitution,<sup>222</sup> the choice to limit Proposition 13 belonged to the California voters, not the California Supreme Court.<sup>223</sup>

On the other hand, the California initiative process itself may justify a more expansive role for the court than simply "evaluat[ing] article XIII A legally in the light of established constitutional standards."<sup>224</sup> It is also conceivable that the court could adopt such a role without totally abrogating the intent of the voters.

Proposition 13 can be altered only by another initiative<sup>225</sup> or by the judiciary. The court in *Westbrook v. Mihaly*<sup>226</sup> stated, however, that the existence of a process for amendment by the voters should not preclude court action.<sup>227</sup> While *Westbrook* was vacated on other

---

amend the Constitution remains in the United States voters. If the voters wish to expand the fourteenth amendment, they can vote to do so. It is not the Court's province to expand the fourteenth amendment beyond the intent of the voters who voted for the amendment.

220. See *supra* note 65.

221. 31 Cal. 3d at 203, 643 P.2d at 944, 182 Cal. Rptr. at 327.

222. *Id.* at 204, 643 P.2d at 945, 182 Cal. Rptr. at 328. See also *supra* note 171.

223. The County Supervisors Association of California attempted to qualify an initiative for the statewide ballot which would give local governments limited power to raise property taxes with a two-thirds voter approval and to raise other taxes with the approval of a simple majority vote, specifically amending section 4. *Local Funding Plan Pushed*, L.A. Times, Feb. 1, 1983, § II, at 1, col. 4.

224. 22 Cal. 3d at 219, 583 P.2d at 1283, 149 Cal. Rptr. at 241.

225. CAL. CONST. art. II, § 10(c) provides in pertinent part: "[The legislature] may amend or repeal an initiative statute by another statute which becomes effective only when approved by the electors unless the initiative statute provides amendment or repeal without their approval."

226. 2 Cal. 3d 765, 471 P.2d 487, 87 Cal. Rptr. 839 (1970), *vacated sub nom.* *Mihaly v. Westbrook*, 403 U.S. 915, *cert. denied*, 403 U.S. 922 (1971).

227. While the state as a whole has the remedy of an initiative amendment, this does not mean that this remedy is realistically available to a local group trying to overcome a statewide initiative. In *Westbrook*, the court stated that "the fact that a majority of the voters of the State of California may have a practically available political remedy does not mean that petitioners or the voters of San Francisco [who represent only a small minority of the voters in the state] have one." *Id.* at 796 n.61, 471 P.2d at 509 n.61, 87 Cal. Rptr. at 861 n.61.

grounds,<sup>228</sup> the court's observation, when considered in light of Justice Stone's famous footnote 4 in *United States v. Carolene Products Co.*<sup>229</sup> suggests that a court may be justified in interfering when the political process itself can provide no relief.<sup>230</sup>

It has been suggested that one role of the courts may be that of "unclogging" the political process.<sup>231</sup> The political process may well be blocked by Proposition 13, both by its imposition of the two-thirds vote requirement on local tax votes and by the necessity, imposed by the initiative process, for a statewide initiative to amend Proposition 13 even as it applies to local issues. *Richmond's* discussion of the inherent unfairness of the two-thirds vote requirement, particularly when it is imposed by state voters upon essentially local tax matters, supports the conclusion that the court's role should be something more than simply interpreting the constitutionality of Proposition 13.

Yet the court, in pursuing such an expanded role, should limit its actions so as to respect the intent of the voters in passing Proposition 13. The *Farrell* court, for instance, could have concluded that local taxes which do not replace lost property taxes do not require a two-thirds vote. This would have been an interpretation of section 4 consistent with the Proposition 13 goal of *effective real property tax relief*; at the same time, it is not so strict a construction that local voters would be forced to undertake a statewide initiative campaign to overcome Proposition 13 before they could approve a local tax with less than a two-thirds vote. The *Farrell* court, however, not only went beyond the role of constitutional interpreter, but entered as well the realm of "supervoter" by defining special taxes in a manner that had no relationship to the voters' intent in passing Proposition 13. The rule of strict construction established in *Richmond* can have a Draconian effect on Proposition 13.

## VI. CONCLUSION

The *Richmond* court concluded that the LACTC was not a "special district" within the meaning of section 4 because it had no authority to levy a property tax and therefore could not replace lost property

---

228. See *supra* notes 188-90 and accompanying text.

229. 304 U.S. 144, 152-53 n.4 (1938).

230. Justice Stone's footnote actually says he reserved judgment. "It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation." *Id.*

231. J. ELY, *DEMOCRACY AND DISTRUST* (1980).



tax revenues. Yet, in light of the *Farrell* court's ability to further limit the scope of Proposition 13 using the rule of construction established in *Richmond*, this definition of "special districts" would appear to be of almost minor significance.

The primary importance of *Richmond* lies in the rule of strict construction established by the decision. The use of the initiative is again rising in California as well as the nation. *Richmond* constitutes precedent for imposing a rule of strict construction on any future initiative. The role of the court thus appears to be expanding; the court may be taking the initiative.

*Katherine Helen Bower*